THE LEGAL SUNDAY

ITS HISTORY AND CHARACTER

BY JAMES T. RINGGOLD

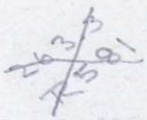
Of the Baltimore Bar

Author of "Law of Sunday;" "The Theory of Culpability;" "Fallacy of the Civil Service Act;" Etc.

"SHALL we say, then, 'Woe to philosophism that destroyed religion'— what it called 'extinguishing the abomination'—'*ecraser l' infame*'? Woe rather to those who made The Holy an abomination and extinguishable."—*Carlyle.*

INTERNATIONAL RELIGIOUS LIBERTY ASSOCIATION

1894



To My Friends,

THE MEMBERS OF THE SEVENTH-DAY ADVENTIST CHURCH THROUGHOUT THE WORLD:

Those True Representatives of the Martyrs of Old,
Inheriting their Spirit, Tasting Somewhat of their Experiences;
Persecuted for Religion's Sake in "Free" and "Christian" America,
As Were Their Prototypes in Despotic and Pagan Rome;
Like Them Hesitating not in the Choice between
"Diana and Christ;"
Yet when Reviled, Reviling not again;
May They yet, like Them, Make History; and by their
Firmness, their Patience,
Above all by the Example of their Pure and Beautiful Lives,
Bring about the Abandonment of Pagan Practices and Pagan Modes
of Thought in all Christian Lands.

TO YOU

Seventh-day Adventists, this Work is Dedicated with the assurance that this world can offer no greater reward of endeavor, no higher honor for the writer, than the privilege of calling you

"MY FRIENDS."

PUBLISHERS' PREFACE.

THE question of Sunday laws and their enforcement, has occupied much of the attention of governments ever since the earlier years of the fourth century; and in our day has become one of the leading questions not only of the United States but of the world. And it is yet to occupy a larger place in the attention of the United States and of the world.

Many books have been written upon the question of Sunday and its observance. Much has been said by the clergy, by the lawyers, by the legislatures, and by the courts, upon the question of Sunday laws and their enforcement. Until very recently, however, there seems to have been no very careful inquiry into the real merits of the case of the legal Sunday. From the days of Roger Williams until very lately, there has been no open challenge of the right of the legal Sunday even to exist. Yet this is the only ground that can be successfully or logically maintained upon the question. And that this ground is successfully and logically maintained, upon Christian, constitutional, and legal principles, in this book, will be clear to every reader of the book.

Merely as a matter of research, the history and character of the legal Sunday is an interesting study, and especially so to American citizens. But since the Sunday has obtained the legal recognition of the government of the United States as an element in "the salvation of the nation," this subject is one of double interest and importance to every citizen of the United States.

In a government founded in the natural rights of mankind; with these rights carefully guarded by a written Con-

stitution; with that Constitution positively prohibiting any recognition of any religion on the part of the government, it is well to know how Sunday secured a standing in a place which it was prohibited from entering at all, and how it is maintained in the place and position which it has secured.

Upon the subject of Sunday in legislation and in law, we think that "The Legal Sunday — Its History and Character" leaves no point untouched and no question unsolved. Fully satisfied that the book is needed, and knowing that it well deserves to be read by every one who would be informed upon the subject, it is confidently sent forth by

THE PUBLISHERS.

AUTHOR'S PREFACE.

SEVERAL years ago the present writer published, through Linn & Co., of Jersey City, a treatise on "The Law of Sunday." The work was mainly technical, and intended for the use of the legal profession. The present volume is the result of friendly suggestions that a popular essay on the same subject would be a timely contribution to the cause of religious equality. An endeavor is here made to embrace every aspect of the question, and to urge every objection to Sunday laws as well as to refute every argument by which they have been or may conceivably be defended.

The book is dedicated to the members of the Seventh-day Adventist Church. It may be well to observe that the author is not himself of that communion. He is simply one who has learned through intercourse with its leading men, as well as with its "rank and file," to admire and esteem them all most highly.

Indeed, it seems impossible that any candid person should ponder the character and history of this remarkable people without being penetrated with admiration for the exceeding purity and gentleness of their lives, and being struck by the extraordinary analogy which they present, both in this regard, and in their religious experiences, to the early Christian martyrs.

For the Seventh-day Adventists keep "the Sabbath" as their weekly sacred day, and they believe that they are divinely commanded to work on the other six days of the week; and they maintain that, as American citizens, they are of right entitled to work when and where they please, so

long as their work does not physically disturb others; and by no means because they work on Sunday, but solely and simply because they hold it to be their duty and assert it to be their right so to do, they are, to the infinite shame of Tennessee and Maryland and other States, and to the everlasting disgrace of this alleged free country and this nineteenth century of alleged enlightenment, persecuted by mobs, as well as under the forms of law; their meeting-places are destroyed, their preachers are stoned and threatened with revolvers, and their members are cast into jail according to the provisions of that unspeakable infamy of the Cromwellian Church Militant, whereby Sunday idleness has been made a civil duty.

Will the Seventh-day Adventists "make history," as their prototypes did of old? Will their persistent and unhesitating choice between "Diana and Christ" profitably compel the attention of those who lead public opinion and mould it into laws to the anomaly of the existence in free America of any statute which is simply the embodiment of a religious dogma, and which *can* be used by one sect to persecute another, so that there shall at last arise in every State, some prophet bold enough to propose, and strong enough to carry, the repeal of the Sunday law? And, meantime, will the patient endurance, the "sweet reasonableness," the martyr spirit of those who when they are reviled revile not again, so prevail against the animosity of their neighbors, that very shame shall extinguish the ardor of "Christian" mobs, and public officials; and the Sunday laws, though not yet repealed, shall be permitted to lapse into "innocuous desuetude?" Well, let us hope for each and all of these things.

It is a great and good service which the Seventh-day Adventists have done to our country and generation in exposing the hollowness of the pretense that religious equality exists among us, and that we have abolished the union of Church and State, in demonstrating that the spirit of

religious persecution is still strong, and that a State religion is still recognized in America. But this does not exhaust the debt we owe to these people.

Their church has given birth to an organization which, by reason of the magnificence of its purpose and the unwavering consistency of its methods, challenges the admiration and commands the reverence of every right-thinking man. That organization is called the "International Religious Liberty Association." Its purpose is, *in the name of Christ*, to effect the total separation of the Christian church everywhere from the State. Although this total separation was the very corner-stone of the Master's teaching, it is a melancholy fact that his followers availed themselves of the very first opportunity they found to unite with the civil power, and to possess themselves of that sword which Peter was commanded to "put up again into his place." And from the days of Constantine to this day, no Christian denomination has ever been willing to go without the assistance of "the police power" when it could be had. Every new sect which has arisen has been keenly alive to the dangers, nay the blasphemy, of a union between the State and any other sect; but every sect has considered it part of the divine purpose that there should be a union between the State and itself. Whatever has been effected in the direction of undoing the evil work done by Constantine and the bishops of 313–325, and "secularizing" government, has been effected through the influence and the labors of "infidels," "agnostics," and the like. And now comes the "International Religious Liberty Association" composed in part, but by no means altogether, of Seventh-day Adventists, and proposes to take from infidels and agnostics the glory and honor of rendering this great service to mankind. It declares that these men are fighting with weapons taken from the Master's camp, after they were cast aside in scorn by his unworthy followers, though he expressly warned them that his cause

could be won with none others. It asserts that he himself came to tell men that true religion could not utilize physical force, and therefore could never come into alliance with the State, which is simply the embodiment of the physical force of the community; that true religion could not persecute, and that no church could desire or utilize a union with the State for any other purpose than the purpose of persecution.

If it be melancholy to reflect that during so many centuries it has been left to non-Christians to defend, and enforce by slow degrees and still imperfectly, these simple Christian truths while professed Christians have uniformly denied them in theory and defied them in practice, surely it is a great and glorious thing to know that we have among us, now, a body of earnest and consistent men, determined at least that the Master shall no longer be misrepresented, and that his doctrines shall no longer be used by his enemies to discredit him before the people, and to keep him out of his kingdom, — the hearts and minds of men. The Seventh-day Adventist Church and the International Religious Liberty Association cannot now grow too fast nor wax too strong for the good of the race and especially of these United States — the one representing a pure and beautiful religion, whose reality and truth are best attested by its effective work on character and conduct, the other at once the embodiment of the Christian and American ideal, standing for the total separation from the State of every church because such separation is a fundamental and vital principle of American politics, and for the total separation from the State of every church calling itself Christian for the additional reason that unless so separated it is falsely and blasphemously so calling itself.

This is an humble attempt to aid in the work of the International Religious Liberty Association.

J. T. R.

CONTENTS.

PART I.

The Historical Aspect of the Question.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

PART II.

The Moral Aspect of the Question.

CHAPTER. I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

CHAPTER VI.

PART III.

THE CONSTITUTIONAL ASPECT OF THE QUESTION.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

PART IV.

SUPPLEMENTARY.

PART I.

THE HISTORICAL ASPECT OF THE QUESTION.

OBJECTIONS TO SUNDAY LAWS ON ACCOUNT OF THEIR ORIGIN. THEY EMBODY THE UNION OF CHURCH AND STATE SET UP IN THIS REPUBLIC BY THE NEW ENGLAND BROWNISTS.

CHAPTER I.

The Importance Attached to Belief by Popular Christianity Gave Rise to the Spirit of Persecution in that System — The Strange Assumption that Belief could be Compelled, upon which such Persecution was Based — The Motive of Persecution by Christians.

CHRISTIANITY is essentially and altogether of faith, for Jesus Christ is both "the Author and Finisher of our faith;" and it is written, "Whatsoever is not of faith is sin."[1] It being true that whatsoever is not of faith is sin, and as Jesus Christ was manifested to take away our sins, it is evident that the salvation offered by Christianity and wrought by Jesus Christ is wholly of faith. And as he is the Author and Finisher even of the faith, as he himself is the giver of the faith which saves from sin, it is therefore and further evident that the salvation offered by Christianity and wrought by Jesus Christ is by grace through faith. And so it is written: "By grace are ye saved through faith; and *that not of yourselves:* IT IS THE GIFT OF GOD."[2]

In this truth, that faith is not of ourselves, but is the gift of God — in this, lies the distinction between Christianity and all other religions. And even more than this; in this truth lies the distinction between the true and false Christianity. True Christianity is not a creed, it is a life; not a body of doctrines formulated by men, but the expression of the life of God in actions of men. This is the difference between "the faith of Jesus Christ," and "the faith of the creed;" between true Christianity and false Christian-

1 Rom. 14 : 24. 2 Eph. 2 : 8.

ity; between the true religion and false religions of all kinds.

The true faith, the faith of Jesus Christ, being the gift of God, bears in itself, and brings to him who exercises it, the divine life, the divine virtue, and the divine power. It brings to men the divine life to renew the soul, the divine virtue to cleanse from sin, the divine power to keep the renewed soul in the way of righteousness, and the divine energy to produce good works, even the works of God. "For in Christ Jesus neither circumcision availeth anything nor uncircumcision; but faith which worketh by love"[1]—not faith *and* works, but faith *which* works. "Then said they unto him, What shall we do, that we might work the works of God? Jesus answered and said unto them, *This* is the *work* of God, *that ye believe on him* whom he hath sent."[2] This faith draws the soul to God, subdues the heart to him, and moulds the whole life in the image of Jesus.

This faith is exercised, all its gifts are received, and all its fruits are manifested, at the free choice of the individual himself alone, before Him who is the Author and the Finisher of the faith itself. For it is written, "If any man hear my words, and believe not, I judge [condemn] him not: for I came not to judge the world, but to save the world."[3] Thus the Author of the true faith, of the faith of Jesus Christ, leaves every man absolutely free to accept or reject, to believe or not to believe his word. This is true Christianity. God is the Author of freedom of choice and freedom of thought in religion, and whoever in anything or in any degree whatever would invade this perfect freedom, thereby and therein supplants God, and Jesus Christ whom he hath sent.

There is another kind of belief, a false faith, which is from the side of man himself, otherwise called "the faith of the creed." This sort of faith is essentially human, for the

1 Gal. 5: 6. 2 John 6: 29, 30. 3 *Id.* 12: 47.

creed is only an invention of men. The creed being wholly an invention of men, and therefore only human, the faith of the creed is but the same. Being only human, it is utterly impotent to bring to men any shadow of virtue or power to take away sin or to renew the life; and the only seeming virtue even that it can possibly have is but a form of godliness, a mere outward profession. This is false Christianity wherever found.

By its extreme conception of the importance of a man's belief of the creed to his eternal welfare, this false yet popular Christianity was led into the requirement of such belief, elaborate and complicated beyond all precedent. If one may suffer eternally by reason of his wrong belief on one subject connected with the "hereafter," may he not probably so suffer in consequence of his wrong belief on some other subject in the same connection? Obviously, the only way to "save" him with absolute certainty was to provide him with the right belief on every point that could be imagined as possible to arise. This amiable desire gave birth to the long and mysterious "creeds," for the sake of which those who misunderstood them in one way plundered and shot and burned and ravished those who misunderstood them in another way, for hundreds and hundreds of years; for whose sake John Huss suffered, and Calvin burnt Servetus alive, and the Puritans murdered the "witches" and Quakers.

Belief in the creed was held to be essential to salvation. But many could not be persuaded to believe the things laid down in the creed, nor even to say that they believed them. In dealing with such persons, the end was great enough to justify any means. The adaptation of the means to the end was not seriously questioned. The propagation of the "faith" was deliberately undertaken on the assumption that it could be shot into a man, or burnt into him, or racked into him, and it was conducted on that hypothesis for hundreds of years; and this notion still pervades popu-

lar Christianity, induces silence in the pulpit in return for contributions, and calls for armed troops to keep the Columbian Exposition closed on "the Christian Sabbath," *et id omne genus.*

Such a conception of the psychological nature of belief would be wildly grotesque if the results had not been so full of misery to the race. The apparently fundamental principles that it is impossible to convince a man of any proposition by torturing him, since the reasoning faculty is not controlled by the body, but the reverse; that we can never really know what a man believes in the matter of religion, because we have no possible way of ascertaining this except from his assertions, and men may lie on this subject as on others; that persons capable of adhering to an abstraction in the face of a horrible death are just the manly, courageous, faithful citizens most desirable in any community, while acquiescence extorted by pain or terror is not only to be suspected of insincerity, but argues a weakling, if not a hypocrite, and in any event a lack of the highest attributes of human nature,— such simple truths as these were utterly beyond the grasp of intellects capable of persecuting for conscience' sake.

We may admit that Charlemagne and other "Christian" princes disguised the greed of power under the cloak of religious zeal, and waged destructive wars against unoffending nations upon the pretense of anxiety for their salvation. But a great deal of "Christian" persecution was carried on in times of peace and within the domains of the civil authority which directed it; and its victims were often men who were not suspected of any disposition to defy or ignore the government. Political aggrandizement could form no inducement for the proceedings against such persons. The motive must be sought elsewhere. No doubt in many cases personal animosity, greed, lust, made their baleful influence felt; and perhaps the proportion of such cases would be larger, could we sift the evidence at this late day. But con-

ceding to such motives their utmost force, the fact remains that they could not have thus manifested themselves if the ostensible purpose of the deeds had not been one which commended itself to the public conscience of the times.

No candid student of history will deny that many of those who actually directed these persecutions, as well as thousands who applauded them, were moved by sincere and disinterested ideas of duty. Their hearts seem hard and cruel, but, fixed immovably at their very roots, lay a profound and perfectly honest conviction that the fire and the torture were necessary for the good of the sufferer, and that the present pain was a means, and the only means, in the last resort, of preserving him from a far worse fate in the other world. Many a priest would sooner have gone to the stake himself than have neglected the duty of holding the crucifix close to the victim's lips throughout his agony, if haply the spirit might move him at any instant to kiss it, and thereby accomplish his salvation. It was believed that if he were so moved and no crucifix were near, then God would require his soul of the priest whose business it was to supply his want.

It is hard to know which to pity most,— the poor heretic whose body is seen in the pictures bound fast to the stake, or the shaven and cowled figure standing near by, watching with conscientious eagerness every movement of his mouth and head, and ready to assist the sufferer at any instant, even at the risk of setting himself on fire, to give the saving kiss to the emblem he carries in the air.

When we remember what that emblem was, Whose image it bore, and what an awful scene it commemorated, we see on one side of the picture a human soul so humiliated, so blackened, so tortured, twisted, beaten into such dissemblance of its Creator, that the spectacle of the burning body on the other side, from whose eyes a spirit looks up with a rapture that flames cannot quench, but only consummate, is a relief to the contemplation.

CHAPTER II.

The Spirit of Persecution could only find Expression through a Union of Church and State — Origin, Persistence, and Development of the Idea of Christ's Kingdom among the Early Christians — It brought them into Conflict with Roman Authority — Despite the Master's Express Warnings and Commands the Union of the Christian Church with the State was Consummated under the Pagan Constantine, and the First Fruits of this Great Apostasy was The First Sunday Law — Sunday the Chief Feast-Day of Mithraicism.

WHATEVER the motives which might prompt towards religious persecution, it is evident that they could never find adequate expression in action save through a union of Church and State. Social ostracism, the form of conspiracy we now know as the "boycott," and personal assaults, doubtless attested at times the zeal of one set of people for the "conversion" of the other. But real, effective persecution could not be carried on save with the State's strong arm.

This coupling of the importance of belief with the strange notion that it could be compelled by the application of physical force, thus inevitably brought forth its fruit in the attempt, which was begun very early in the history of Christianity and has never yet been abandoned, to effect a union of the Christian Church and the State, that is, to set up a kingdom of this world for the Master, in defiance of his will plainly and repeatedly declared.

The Messianic prophecies of the Jews, however spiritual their inner and true significance, were frequently couched in terms suggestive of earthly exaltation and military glory;

and in this spirit they were all received and understood by those to whom they were addressed. Exceptional phrases here and there, irreconcilable with any reference to material things, were either ignored or misconstrued. The people in their depression looked for a Prince who would by armed force overthrow their enemies and re-establish their ancient state. It could hardly be otherwise. The masses of the Palestinian Jews never appreciated their wonderful mission as the custodians and trustees of spiritual truth for the benefit of all mankind. They were essentially the most self-contained and least cosmopolitan of peoples. Exclusiveness was the very corner-stone of their polity. To have entered that land and possessed it was to them the demonstration of their favor with Jehovah. As their political power was gradually beaten down, and the prophets proclaimed the coming "Redeemer," what could they understand him to be, but one who should restore to the chosen people the physical power and external glories of David's reign?

The first converts to the Master's teaching, the disciples themselves, were full of this conception. When he spoke of his "kingdom," no number of assurances that it was "not of this world," could eradicate from their minds the fixed impression that, sooner or later, he would set about the establishment of a temporal government in which they would occupy high and lucrative offices. That such was his design was the belief of his enemies and friends alike. Nor need it be doubted that while the first sought to "tempt" him to his destruction by inducing him to utter treasonable words, some of the second sort stood around, hoping from different motives that the experiment might succeed — confident that an expression of hostility to Cæsar would be immediately followed by the manifestation of a divine power which would destroy Cæsar's rule and scatter his forces. The disciples understood at the crucifixtion that the time for establishing the new government had not arrived; they realized after the

ascension that the occasion was again postponed. But still the "second advent" remained associated in their minds with deeds and triumphs like those of Joshua and of Gideon.

The first Gentile converts were strongly dominated by the same idea, merely giving it a wider application. The new kingdom was to have for its princes and rulers not Jews only but the elect of every nation. But they, too, looked for its establishment by fire and sword. Moreover they were inclined to accept, as applying to their own day, the assurance that "this generation shall not pass away till all things be fulfilled." And they were generally agreed that the "return" would be on some weekly anniversary of the resurrection, and that it would occur during the hours of darkness, like the other mysterious phenomenon. And so for a long time the "congregations" used to meet at sunset every Saturday evening, when "the first day of the week" began according to Eastern computation, and to remain together till the dawn, "prepared to meet him."

The union of Church and State among the Romans was very complete. But, as the Romans had no creed, they were not naturally persecutors. They admitted, nay, adopted, into their pantheon, the gods of all conquered nations, identifying them usually, but not necessarily with the figures of their own mythology.[1] In view of these facts the relentless cruelty with which they treated the early Christians has puzzled many historians. The first pagan persecution was that which followed the great fire at Rome in Nero's reign.[2] The unanimity of public opinion in ascribing this

1 So liberal was Romulus in this regard that a learned writer has said that the founder of Rome made his city, so to speak, "an asylum for gods, as well as men."—*M. l'Abbé Gravé, Mem. Acad. des Inscrip., etc., Vol. iv, p. 161.*

2 It has been asserted that Nero set fire to Rome and charged the Christians with being responsible for the great conflagration, in order to divert suspicion from himself. There is little or no foundation for this story. But, assuming it to be true, the questions remain: Why did he select the Christians for his scape-goats? What had they done which suggested and justified his reliance on the success of such a subterfuge? Why were they, at such an early stage of their history, "odio humani generis convicti,"—"believed to be guilty (without evidence) through the hatred they had inspired in the

disaster to the Christians is remarkable. The extraordinary tortures inflicted by way of reprisal surprised the calmer observers among the Romans themselves.[1] What was the secret of an animosity so inconsistent with the whole spirit of the Roman civilization, and too, directed against a single sect?

An ingenious suggestion[2] is that it began with these nocturnal assemblages just mentioned. To such meetings the Romans always cherished a deep antipathy. They knew that in many cases they were the nurseries of vice and not infrequently the agencies of treason. It was the fixed policy of their civil administration to forbid them and to break them up at any cost. To this we may add that the character of the answers given by the Christians who were interrogated as to their purpose in gathering together at such unusual hours, were probably calculated to stimulate rather than allay the suspicions of the authorities. Scorning equivocation, proud of their name and expectations, their utterances were bold, if vague, and suggestive often of violent revolution. They met on Saturday nights to await the coming of somebody whom they called "a Prince" and "a Messiah." He was to come in glory and to reign with his chosen ones; he was to overthrow all principalities and powers, and to subdue all things under his feet.

Such language as this from men who met at night in secret places might well alarm the representatives of any government. And, if the Roman authorities attached a purely physical significance to these statements, and regarded the Christians as conspirators who were preserving and strengthening their organization while awaiting a signal from some central power to break out into open revolt, we must bear in mind that, as already observed, the Christians themselves held the same material view of the dispensation they

whole human race," as Tacitus vigorously puts it? See Gibbon's "Decline and Fall," chaps. xv and xvi; also the article "Christianity," in Encyclopedia Brittanica.

1 See Tacitus, Annals xv, 44.

2 Made by Dr. David Irving in his "Observations on the Study of the Civil Law."

expected. And it was not long before they began to voluntarily preach and prophesy the overthrow of the existing order, and the subjugation of all things under the feet of a mighty conqueror who should destroy gods as well as emperors.[1] It is no wonder that all who were interested in the existing order of things learned to dread and hate a people whose chief delight it was to denounce that order and proclaim its imminent dissolution. Nor should we lose sight here of the "spirit of martyrdom," which influenced the early Christians so strongly as to make them not only willing but often anxious for torture and death. There was the crown of immortality, of eternal bliss, always before their eyes. And there was the psychological fact that the surest possible way to convert men to their opinions was to show themselves willing to suffer and die therefor.[2] They were firmly and rightly convinced that by their sufferings they were rendering the greatest service that could be rendered to the Master's cause, and that their reward was ever waiting to be enjoyed.

Again, the Christian system of settling their differences with each other before tribunals of their own,[3] and avoiding the regular courts, lent color to the idea that they harbored unfriendly feelings toward the established order, and marked them as men indifferent to the ordinary obligations of allegiance. And there was yet another factor which doubtless

1 Consult Milman's "History of Christianity," chap. vii. Extracts are there given from the writings of Christian authors openly predicting the speedy destruction of the Roman government and its replacement by a new and "Christian" system.

2 An ingenious free-thinker, Count Volney, has found fault with the psychological fact here mentioned, and has pointed out that a man's preference to be tortured to death rather than cease to proclaim that two and two make five would not afford the slightest evidence that two and two do make five. But this is confounding matters of demonstration with matters of faith. Notwithstanding the extremest claims of agnosticism, men of all shades of belief and no-belief hold fast to many things which, from their very nature, can never be the subjects of demonstration. And as long as the human mind retains its present constitution as to these things, the masses will be more influenced by the intensity of conviction which they discern in the advocates of a particular doctrine than by any number of cold appeals to their reasoning faculties.

3 See 1 Cor. : 6.

played its full part in provoking the hostility of the civil power. The various forms of paganism could exist side by side. But Christianity, with its proselyting spirit, made warfare on them all. The priests of every cult found their credit and livings in danger. The union of religion and the State gave them opportunity, the common peril supplied the motive, to urge on a destructive warfare against this new, strange enemy, while laymen who found themselves unable to accept the Christian doctrine were not propitiated by the warnings of their future fate, often no doubt administered by members of their own households, whose authority to pronounce on such a matter for them they were very far from recognizing.

But, whatever the early Christians anticipated that they would at some time or other be called upon to do, however far they were prepared to go on the eventful day when the Master should come again in glory and place himself at their head,—*not one of them dreamed of committing an overt act till his command should be given.* It was for him to come and say in what manner and by what means his kingdom should be made one of this world. His faithful soldiers were ready to obey his orders, as soon as given. Without orders, good soldiers do not move. Meantime, their duty, as they understood it, was to preach his name to others, to maintain their weekly meetings, and to organize in order to work more effectively in his cause.

In this way for many years the Master's words were fulfilled. The Ruler whose kingdom was not of this world was by soft persuasion, by "sweet reasonableness," above all by the example of pure and gentle lives, drawing all men unto him. But the weakness of human nature could not be content with this spiritual conquest. Just as the first disciples mused mistakenly on the time when they should be clothed in purple and fine linen, and fare sumptuously every day, and be the founders of a new race of nobility, so likewise

many of their successors forever hankered after the flesh-pots of Egypt. Especially did bishops and presbyters, having the authority, yearn for the pomp and circumstance of the pagan priests. Administering to poor congregations with precarious salaries, they envied the richly-compensated servitors of the temples, with their contributions from the state treasury, supplemented by the costly gifts of hundreds who would affiliate with any communion that might be used as a means of social or political advancement.

The idea of establishing the Master's kingdom in this world, then, would not down. But the early principle that its establishment must await his personal direction and control was altogether lost sight of. Men began to ponder the establishment of such a kingdom *without the presence of the Sovereign*, its ordained Ruler. It was to be "made ready" for him against his coming; and till he should come, it was to be governed by its founders in his name; and they were to enjoy by means of its establishment such good things of earth as luxury without labor, and wealth, power, honor, and pre-eminence over their fellow-creatures.

There came a time when forces set in motion by the Master had subdued such numbers that it was possible to bring into play, forces which he had expressly repudiated; in other words, when so many had been peacefully brought to acknowledge him, that force could safely be invoked to extort that acknowledgement from others — in other words again, when Christianity had a following sufficient to command recognition as the religion of the State. As a matter of course, the instant that this was accomplished, it ceased to be the religion of the Master. The kingdom of this world was indeed established in his name, but it was established without the King.

And who was taken as his substitute? — The pagan Constantine. A man of consummate genius, and absolute insincerity; of no belief, but unbounded hypocrisy; of no honor,

yet of effeminate sensitiveness; without a conscience and without a God. The setting up of a kingdom of this world in the Master's name, was not merely an un-Christian, it was an anti-Christian act. It was done in very defiance of his express command. It was a linking of the spiritual with the material; a degradation of the divine institution which he had founded; a dragging of sacred things in the dust. It was pre-eminently fitting that such a man as Constantine should be the vicegerent of such a kingdom. There is hardly an attribute we can imagine as pertaining to the complete character of antichrist which was not developed in him to the fullest extent. He was therefore a most appropriate head of the Great Apostasy, and anti-Christian movement for a union of Church and State — the very creature to do in the Master's name what he had forbidden to be done.

That custom of the early Christians to meet at the beginning of Sunday, which exposed them to Roman suspicion and hostility, developed into a permanent and important part of their communal religious life. It was natural that those thus assembled should eat and drink together. And, when we consider the object of their assembling, that their meals should partake more or less of the character of a religious ceremony was no less inevitable. But there is no evidence that at first the notion of transferring the Sabbatical observance to Sunday was at all entertained. On the contrary, all the evidence as well as the lack of evidence, points to the conclusion that no idea of peculiar sanctity was attached to the first day of the week by these original Christians, and that after the hour had passed when the expected event was looked for to occur, they betook themselves to their homes and went about their work or business as usual. Yet no doubt these Sunday meetings helped to smooth the way for the final substitution of Sunday for the Sabbath, to which another motive now to be mentioned also contributed.

Besides their nocturnal assemblies, another considerable cause of Christian unpopularity was the Hebraic origin of the religion. Among the peoples subdued by the Roman arms the Jews were conspicuous for the vigor and tenacity of their resistance. A corresponding hostility was excited in the minds of the conquerors, which Jewish exclusiveness and want of deference to Roman arrogance did not tend to diminish. The Romans in their judgment visited the sins of the Jews upon the Christians. And as Christianity spread among the Gentiles, this identification of the two appears to have been felt as an obstacle to its progress, and accounts for the gradual substitution of Sunday services for the Saturday night vigils, the total abandonment of the Scriptural Sabbath, and the readiness of the Christians to adopt the sacred day of the sun-worshipers as their own. Some of the early Christian writers, indeed, betray a disposition to represent Christianity as a refined, spiritualized, sublimated version of the religion of Mithra. It is curious to find these men, for the sake of popularity, and in order to commend their cause to the minds of others, willing to be confused with sun-worshipers in the minds of the superficial, while strenuously endeavoring — as witness the frequent decrees of councils against "Judaizing" by the observance of the Sabbath — to emphasize the completeness of their separation from that race to which their Founder belonged, and whose Sabbath was the only one he knew.

It has been observed that the anti-Christian movement toward a union of Church and State was the result of the un-Christian lust of the clergy after wealth and honor. Of course as soon as that union was effected, they began to use it for their own worldly aggrandizement. Now the collection-box is, so to speak, the center or cog-wheel of the machinery for clerical aggrandizement. But, in order that people may put their money in the collection-box, they must first go to church. It was perceived that to force them to go

to church would be a difficult and costly experiment of police. Yet something might obviously be accomplished by calling them off from their regular occupations. The enforced idleness would naturally lead to contemplation, and contemplation might suggest that one way of "killing the time" was to go to church. Moreover, the Jews had set the fashion for all time of the observance of a weekly sacred day. True, with the Jews there was no such indirect purpose of driving people to church and into the presence of the collection-box, on which last their clergy were not dependent. The Hebrew Sabbath was quite as much a day of rest for priests as for the people generally. It was "set apart" with no such sinister purpose as Sunday has been set apart, but in plain good-faith, that all might pause in the race of life to ponder the mystery of a creative and protective Deity.[1]

When the union of Church and State was accomplished under Constantine, almost its first fruit was the first Sunday law (A. D. 321). This commanded that judges and people of the cities and artificers should rest, but specially provided that agricultural labor might be prosecuted as on other days, "lest by neglect of opportunity, the bounty granted by divine foresight be lost." The name given to the day in this famous edict is remarkable, and sheds a flood of light on the character of him who promulgated it, and of those who asked him for it. The day is called "the venerable day of the sun."

A new, exalted, and transcendental type of the ancient sun-worship contended with Christianity during three hundred years for the mastery of the European mind. Constantine had no religion; but he was, like many other men of powerful minds, deeply tinctured with superstition. And of the superstition of sun-worship, or Mithraicism, as of every

1 But it seems that this "spiritual" purpose of the Sabbath, while it is distinctly set forth in one of the versions of the fourth commandment, was little regarded by the Jews; and that the national and historical aspect of the anniversary, which concerned them particularly, gave it its chief importance in their eyes.

other superstition of his day, he had imbibed a goodly share. Moreover, he was subtle and politic in a high degree, and it was his practice to play one of the contending parties, Christian and pagan, against the other, and thus preserve a peaceful balance of forces in his empire. Now, "the venerable day of the sun" was the great sacred day of the Mithraicists; and to "set it apart" under the name by which they knew and "observed" it, to bestow this especial state recognition on their holy day could not but be accepted by them as a great compliment to their religion and as an official acknowledgement, if not of its sole verity, at least of its superiority to all rival cults. The use of this phrase, then, was characteristic of the wily Constantine. But what shall we say of those who, for the honor of the Master, would stoop to such hypocrisy? What of those who were willing to have the day they professed to know as "the day of the Lord" honored through their instrumentality as "the venerable day of the sun"? What of those who dressed Christ in the robes of Mithra? Shall they not one day stand with those who robed him in purple and put on him a crown of thorns, and spat in his face? [1]

[1] The brutal pagan, Constantine, granted religious *toleration* to his Christian subjects soon after his alleged conversion. And later, he gave them the first Sunday law, as stated in the text, in the name of Mithra. Says Mr. Milman, "The rescript commanding the celebration of the Christian Sabbath [*sic*] bears no allusion to its peculiar sanctity as a Christian institution. *It is the day of the sun which is to be observed by the general veneration.* . . . The believer in the new paganism, of which the solar worship was the characteristic, might acquiesce without scruple in the sanctity of the first day of the week."—"*History of Christianity*," *book iii, chap. i.*

Concerning another incident which marked the Great Apostasy of the union of the Christian Church with the pagan State, Mr. Milman speaks as follows: "Constantine immediately commanded the famous labarum to be made, the labarum which for a long time was borne at the head of the imperial armies, and venerated as a sacred relic at Constantinople. The shaft of this celebrated standard was cased with gold; above the transverse beam which formed the cross was wrought in a golden crown the monogram, or rather the device of two letters which signified the name of Christ. And so for the first time the meek and peaceful Jesus became a god of battle, and the cross, the holy sign of Christian redemption, a banner of bloody strife."

In the paragraph following this description of the labarum, Mr. Milman observes of Constantine's alleged conversion to Christianity: "The irreconcilable incongruity between the symbol of universal peace and the horrors of war, in my judgment, is conclusive

However they shall be finally judged, in their indifference to the means whereby their ends might be attained; in their willingness, nay eagerness, to adopt any subterfuge, to avail themselves of any false pretense, to crawl and wriggle to their goal through any by-way, however dark and foul; the advocates of this first Sunday law are in no whit distinguished from those who prate to-day of "a secular Sunday," and "police regulations," and "sanitary legislation," in order to force a dogma of their religion down the throats of "free" Americans. Recently, Mrs. Josephine C. Bateham who, on behalf of the "Sunday-law combination" in the United States, was asking Congress to incorporate the dogma of Sunday idleness into a Federal statute, remarked that the phraseology of her measure would better be altered in one place, "in order that it may not have the *appearance* of

against the miraculous or supernatural character of the transaction." And in a foot-note to this paragraph he adds: "I was agreeably surprised to find that Mosheim concurred in these sentiments, for which I will readily encounter the charge of Quakerism." Yet Mr. Milman in the next breath speaks of "the admission of Christianity not merely *as a controlling power and the most effective auxiliary of civil government*" (*an office not unbecoming its divine origin*) [*sic*]. Of course there is a confusion of ideas here. A "controlling power" cannot, strictly speaking, be "auxiliary" to any other power. But what Mr. Milman means is, in plain English, that a bargain whereby, on the one hand, the civil government was to force the people into external deference to certain dogmas, and compliance with certain ceremonial observances, as the same might be "settled" by councils from ime to time; and, on the other hand, the church was to frighten the people by threats of everlasting fire and brimstone, into doing anything that the civil government might order, — that such a bargain as that was "not unbecoming" the divine origin of the Christian religion! On this point one need not apologize for preferring the authority of the Founder of Christianity to that of Dean Milman. But these last quotations have been introduced here mainly to show the extraordinary influence of the *zeitgeist*, or time-spirit, on character or abilities of very high order, cultivated to the utmost,—on such a character, if Dean Milman discerned the truth of the matter, yet lacked the manliness to write it down; on such abilities, if Dean Milman did not see that the great blasphemy of making the Master's religion a "controlling power" and "effective auxiliary" of "civil government" necessarily included the lesser blasphemy of converting "the meek and peaceful Jesus" into "a god of battle," since battles are liable at any moment to become the business of civil government, and therefore the business of any "power," whether "controlling," or "auxiliary" to such a government; if he did not see that a Church united with the State must respond to the call to bless the banners that symbolize death, and give thanks for massacres and devastation, since this is part of the very business she is "admitted" as a department of the government to do; — if he did not see, in short, that repeating rifles and Gatling guns are quite appropriate weapons in the hands of that Christianity which finds the wielding of the policeman's club "an office not unbecoming its divine origin."

what all Americans object to, a union of Church and State." The idea was to accomplish the reality and to delude "all Americans" by the false appearance. So the anti-Christian conspirators with the unworthy Constantine doubtless observed to him and to each other: "Let us call it 'the venerable day of the sun,' that it may not have the appearance of what all these pagans would object to, a union of the Christian Church with the State."

After Constantine's edict, till the rise of Brownism, Sunday, while it was generally observed, lost some of its prominence, through the adoption of many other feasts, as well as many fast days, by the Church. And such observance as was given it, was unquestionably more like that of Catholic countries to-day than like the present American practice.[1]

[1] At different times, however, decrees of council, etc., were passed, referring to the observance of Sunday. These will be found, together with Acts of Parliament, State laws, etc., in "Sunday: Legal Aspects of the First Day of the Week."

CHAPTER III.

The Union of Church and State, Signalized by the Promulgation of the First Sunday Law, Gave Free Rein to the Spirit of Persecution — The Theoretical Right whereof was Denied by no Early Sect — The Discovery of "Toleration;" but beyond mere "Toleration" the Zeitgeist had not Moved when America was Discovered, nor when the English Colonies were Planted in North America — Distinction between Toleration and Equality among Religions — Religious Equality Expressly Provided Against in the Fundamental Law of every American Colony.

JUST as soon as the professed Christian Church had substituted Constantine for Christ as its head, and united itself with the pagan State of Rome, it began to use as a means of its own aggrandizement the weapons of persecution which had hitherto been used against it, and had now come into its hands. And these weapons were wielded with perfect impartiality against pagans, and against Christian sects which were so unfortunate as not to have the State's force at their command.

Nor was this Great Apostasy a thing of brief duration, a passing frenzy, a false step soon retraced. It has never been retraced to this day. The spirit of persecution still dominates thousands who professedly follow the Master. The idea still lurks in many minds that belief may be superinduced by the vigorous application of the policeman's club to the heretical head, and that the "conviction" necessary to salvation can, somehow or other, be secured through a criminal proceeding.

And the manifestations of this spirit meet and shame us at every stage of history from Constantine to Victoria. Many sects of Christians arose from time to time. They differed from each other on almost every conceivable point, and on various utterly inconceivable points. But the right and the duty of persecution remained the one principle which they all held to in common — the "blessed tie that bound" together the disciples of Him who should not "strive nor cry." The sects which found themselves for the time being "in opposition," so to speak, disputed neither the fair intentions of the dominant sect, nor the general correctness of its actions, provided its premises were conceded. That it was a good thing to burn heretics was not doubted by the generality. The only question was, Who were the heretics? Hence each sect, as soon as it was able, began to burn heretics on its own account. All the sects objected to being persecuted; none of them understood religious liberty in any other sense than as liberty to them to persecute the rest. Of religious *equality* none of them had any idea whatever.

This is an important distinction, too often overlooked. When we read the earnest protests of many writers of the past against persecution, we are too prone to infer that they objected to persecution *as such*, like right thinkers of our age. But nothing could be farther from the facts. It was the exercise of violence and terror to make men disavow the truth, which they objected to so strenuously. As soon as the believers in the truth had violence and terror at their command, they used them as a matter of course against the believers in error.

And, of course, like the right and duty of persecution, its necessary means, the union of Church and State, was an accepted axiom with every sect. Each sect considered that it ought to form a part of the State, and to have at its disposal the power of the State to persecute the other sects to its satisfaction. Now, one of the inevitable results of this way of

thinking was to foster the very condition of things it was designed to prevent. Treason and heresy were not only regarded as synonymous by the ruling sect, but those whose real differences with that sect were merely on abstract questions of religion, were driven into overt treason by the necessities of the case, though they had no original grievance against the government. Compelled to meet secretly and at night, to shelter and protect each other, it was inevitable that the dissentients should combine and set up a sort of *imperium in imperio*, which the government in turn was bound to crush for its own preservation.

But, as the time wore on, through long experience two discoveries were made. One was that persecution could not be relied on as an infallible specific for heresy; that, while it sometimes proved effectual, as when the Albigenses were practically exterminated, it almost always resulted in an extension, instead of the suppression of objectionable doctrines. And the other discovery was that, if they were not treated *a priori* as traitors and pursued accordingly, people might repudiate the State religion and yet remain good, reliable, patriotic citizens, such as, for its own sake, the State ought not to kill, or maim, or exile.

Political expediency and practical experience thus co-operated to develop the wonderful idea of "toleration." But humanity was beginning to awaken also. Contemplating the horrors of persecution, men began to inquire not only into their effectiveness, but into their necessity, conceding that they accomplished the end in view,—of making converts. Creeds now began to be threshed over, and disputes to arise among the admittedly orthodox as to many of their multitudinous minor points. Their very length and complexity led to differences of interpretation, and prepared men's minds for the conception that there might be some distinction between beliefs necessary to salvation, and beliefs not necessary thereto; and that it might not really be a Christian duty

to burn a man to death by way of satisfying his mind about these last. And so "toleration" came to be a thing spoken of with apologetic approval, practiced to a limited extent, yet fiercely repudiated and denounced in many influential quarters.

In the direction of toleration, then, the general opinion — the *Zeitgeist* or time-spirit — of Europe had begun to move when Columbus set sail for America. The ceaseless theological controversies of the twelfth century had shaken the unity of the church, and continued to bear their fruit during the thirteenth and fourteenth centuries, in the development of heterodox sects, as well as conflicting "schools" claiming the right to remain within the orthodox fold, which they denied to others. Sectarianism had even been inaugurated and defended by ordained priests of the Catholic Church. The spectacle of rival claimants to the papal chair had suggested to the popular mind that differences on very important topics of religion were not necessarily incompatible with the preservation of social order. Each had excommunicated the other, and appealed to the laity for support, thus invoking the exercise of that "right of private judgment" hitherto denied.

But so slightly felt by the *Zeitgeist* was the influence of this idea of toleration that the worst infamies of persecution were committed after 1492. The torture and massacre of pagans in the beginning of the union of Church and State were yet to be outdone in the torture and massacre of Christians whose creed was not that established by civil law.

By the time that the English began to colonize this country, the pendulum had swung back again. Other influences, co-operating with the spirit of commerce, had given rise to the movements directed by Luther and Zwinglius and Calvin. But beyond a faint recognition of the policy of toleration, to an uncertain extent, and under uncertain conditions — beyond the conception that it was an important experiment, worth trying, though fraught with serious dangers — the *Zeitgeist* of the

English colonization period had not advanced. It still accepted the idea that belief could be influenced by assault, and that it was a sacred duty to make the assault when the belief was wrong on any vital point. But it was slowly and with many painful contortions assimilating the thought that some points of religious belief might not be vital, and that as to such points the receiving and even the preaching of doctrines contrary to those of the church by law established might be *tolerated.*

Such, too, was the time-spirit which dominated the minds of the American colonists. They were in no respect ahead of their day. Some of them, as will presently appear, were more advanced than others, that is to say, they were inclined to extend the lines of toleration farther. Beyond an extension of toleration none of them dreamed of going. Of religious equality, that is to say, of the absolute equality of all forms of religion and of no religion, before the law, they had no notion whatever. If the notion had been propounded to them, they would have pronounced it the equivalent of anarchy. It was broached, indeed, by individuals here and there. But it was a dangerous thing to do, as it is in every age, to pit the individual judgment against the *Zeitgeist;* and, with the exception of one single case to be mentioned again presently, and so extraordinary that it deserves to be called a latter-day miracle of Christianity, it was never accepted as a theory, nor put in practice even experimentally.

Upon no false assumption in history have more lies of fact and of inference been based than upon the false assumption that religious equality, — as right thinkers define and defend it to-day, that is, the absolute equality of all religions and of no religion before the law, — was understood by any considerable number of men, when this country was first colonized; and the equally false assumption that any body of English colonists had grasped such an idea, or were in-

fluenced by it, or entertained the slightest notion of establishing religious equality on these shores.

Pride of ancestry is neither good nor bad in itself. Like pride in general, it is a sentiment whose value is measured by its effect upon conduct. In some it breeds arrogance, insolence, idleness, inhumanity. In others it is a stimulus to purity of life, honesty, high and noble aspirations, a conscientious discharge of duty without regard to consequences. So with national pride. In the history of every nation there is enough to be proud of, and for each generation to strive to equal or surpass, and it is good to dwell on these things so long as we are thereby inspired to emulate them. American history is full of illustrations of the highest attributes of which our nature is capable; of bravery, of self-sacrifice, of laborious industry, of endurance, fidelity, and all things good and great. These are our moral inheritance, the capital of idealism handed down to us, which it is ours to re-invest in right living, and pass on enlarged to those who shall come after us.

But if we are to be profited by the past, it is essential that we should study our history honestly and impartially. We cannot be true to ourselves if we begin by being false with our predecessors. If we credit them with motives they did not feel and could not have understood; if we claim for them things which they never accomplished; if we defend their indefensible acts; if we seek to prove them in the right when they were in the wrong in their behavior toward others,—it will follow that we will deal likewise in our own case, and prove dishonest and tricky as a nation and in our personal transactions. Moreover, we thus expose ourselves to constant danger of mortification and loss. In this age of investigation and inquiry, our false gods are liable at any moment to be overthrown, and to have their rottenness exposed under the search-light of the "scientific method." And when a cherished set of ideals is dissipated, the process of replacing

them is slow and painful, and to many mental constitutions it is impossible.

No better instance of this unreasonable way of writing history can be found, than the claim so brazenly urged on behalf of the first American colonists, that they were the champions of religious equality as we understand it. In fact, as observed above, religious equality as we now understand it, was not understood at all when these colonists came from Europe, save by a few persons whose lives were in constant danger for their premature perspicuity. And, without a single exception, religious equality was carefully guarded against under every colonial administration.

It has happened, also, by a singular and perverse fatality, that this false pretense has been most strongly and incessantly put forward on behalf of the only colonists who came hither for the express purpose of founding a theocracy of their own; who did, in fact, set up the only independent, formally established church that ever existed in this country; who alone of all the colonists, seriously persecuted for religion's sake; who vied with the worst fanatics of Europe in the ferocity and relentless cruelty of their persecutions; and whose annals are stained with atrocities so infamous that one is amazed to find their descendents inviting discussion of the subject instead of allowing it to drop as completely as may be into oblivion. Nor is it necessary to apply the unfair standard of our better times to these bigots, in order to reprobate their ways. They stand out in broad contrast with their fellows as the only actively aggressive persecutors on American soil. We are sorry that "toleration" should have been universally accepted in lieu of religious equality; and that it should have been imagined that toleration had reached its reasonable limits when it was extended to all "Christian sects." We regret to read of the banishment of Quakers and the expulsion of "papists" from soil procured for the settlers by one of the best papists and best men that ever lived. But the American patriot's

cheek never kindles with shame till the story of the New England Puritans is told. Theirs alone is the dishonor of the torture, the mutilation, and the scaffold.

But beyond "toleration" none of the American colonists nor others of their day had advanced a step. Now, toleration, of course, implies superiority. It is an act of condescension, of forbearance, by the higher and better toward the lower and worse. It involves the right to persecute and destroy, and the grace which forbears. It is plain that the idea of religious toleration is utterly inconsistent with the idea of religious equality. Perhaps no man who understands the true nature of religious beliefs, *or of sincere unbelief in matters of religion*, will admit that one position on such subjects is "just as good as another." Certainly no man who has a religion of his own and appreciates and values it as he should, will be content to have his profession and practice of it "tolerated" by the professors and practicers of any other religion, as an act of condescension from the better to the worse.

It has been said that religious equality was carefully guarded against in every colonial administration. Thus, in Carolina no man could have the benefit of the laws or own property, or be a freeman, who did not "acknowledge the existence of a God who was to be publicly worshiped;" and the Church of England was declared to represent the only true and orthodox religion.[1] And this under a constitution drawn up by John Locke, a man who knew better, as his writings show.

Later, in South Carolina, a "liberty of conscience" was proclaimed which did not extend to a "denial of the Trinity."[2]

North Carolina considered that she was doing all that could reasonably be expected of her when she confirmed the laws existing previous to her separation from South Carolina "for the indulgence of Protestant Dissenters."[3]

1 "Story on the Constitution," Vol. i, p. 33. 2 *Id.*, p. 140. 3 *Id.*, p. 142.

In Georgia's original charter the "free exercise of religion" was granted to all "except papists."[1]

In Virginia, under the first charter, the English Church was established by law.[2] Later, courts-martial had authority to punish "*indifference*, with stripes; and *infidelity*, with death;"[3] and the legislature afterward confined the protection of the charter to those who believed in "the Trinity and the divine inspiration of the Scriptures;"[4] and though the Catholic Lord Baltimore, when driven from his own province of Maryland, found a refuge in Virginia,[5] though the Puritans of Plymouth were invited to make the shores of Delaware Bay their home,[6] and though some Massachusetts people did actually emigrate to Virginia,[7] yet in 1643 it was forbidden to preach or teach privately or publicly except in conformity to the constitutions of the Church of England; and non-conformists were banished,[8] and in 1658 Quakers were expelled, and their return regarded as a felony.[9]

By the charter of Maryland, Christianity was made the law of the land, though no preference was given to any sect;[10] but the idea of toleration had not gotten beyond Christians; and in 1649 an act was passed to punish with death, followed by confiscation of all his lands and goods to the proprietary, any one who should "blaspheme God, or deny Jesus Christ to be the Son of God, or deny the Holy Trinity, or use any reproachful speeches concerning the Holy

1 *Id.*, p. 143. 2 Bancroft's "History of the United States," Vol. i, p. 123.
3 *Id.*, p. 143. 4 "Story on the Constitution," Vol. i, p. 125.
5 Bancroft's "History of the United States," Vol. i, p. 197.
6 *Id.*, p. 198. 7 *Id.*, p. 206. 8 *Id.*, p. 207.
9 *Id.*, p. 231. Bancroft says, however, that though the laws in Virginia were severe, the administration was mild. (*Id.*, p. 206.) And in fact we find that when Governor Berkely forbade the Puritan preachers to hold public services, "the people resorted to them in their private houses to hear them," and Puritan authority says nothing of interference with these private meetings (see Campbell's "History of Virginia," p. 203), though another preacher who followed the first three was ordered by Berkely to leave. (*Id.*, p. 211.) The Presbyterians early obtained a foothold in Virginia, and the followers of that faith do not appear to have been interfered with. (*Id.*, pp. 438, 446.)
10 Bancroft's "History of the United States," Vol. i, p. 243.

Trinity or any person thereof;"[1] thus Jews and Unitarians were left out; and the former were not eligible to office in Maryland till 1825.[2]

New York passed an act condemning to perpetual imprisonment all "popish priests" remaining in the colony after a certain date, and death if any escaped and were retaken.[3]

In New Jersey "liberty of conscience" was allowed to all persons "but papists."[4]

Pennsylvania guarded against molestation all who believed "in one Almighty God;" and all who "*possessed* faith in Jesus Christ" were eligible to office.[5]

In the colony of New Haven the identification of Church and State was complete, and the Scriptures were adopted as a code of laws.[6]

Much the same state of things prevailed in Connecticut, where all were required by law to attend at the Established Church, and Quakers "and other notorious heretics" were required to be imprisoned or banished.[7]

By the charter of New Hampshire "liberty of conscience" was allowed to "all Protestants" only.[8]

In the colony of Massachusetts "heresy" was punished with fines, banishment, and in "obstinate cases" with death;[9] and attendance on public worship, sustained by the State, was enforced by the penalty of a fine.[10]

In Rhode Island the principles of that marvelous man, Roger Williams, found full expression at one time. When

1 Scharf's "History of Maryland, Vol. i, p. 174. 2 *Id.*, p. 153.

3 "Story on the Constitution," Vol. i, p. 75. Persecution was occasionally resorted to by Stuyvesant, the Dutch governor of "New Netherlands." It was always rebuked by the company in Holland which he represented; and the persecuted of every creed were invited by the kind and hospitable Dutch.—"*Bancroft's History of the United States,*" *Vol. i, pp. 300, 302.*

4 *Id.*, p. 120. 5 *Id.*, pp. 123, 124, and "Frame of Gov.," 1683, art. 34.

6 Bancroft's "History of the United States," Vol. i, p. 404; "Story on the Constitution," Vol. i, p. 85.

7 "Story on the Constitution," Vol. i, pp. 90–92. The law against Quakers, says Bancroft, never was enforced (Bancroft's "History of the United States," Vol. iii, p. 70).

8 *Id.*; "Story on the Constitution," Vol. i, p. 80. 9 *Id.*, p. 74. 10 *Id.*

her charter was granted, it was expressly provided that "no person within the said colony shall be anywise molested, punished, disquieted, or called in question for any difference in matters of religion; every person may at all times freely and fully enjoy his own judgment and conscience in matter of religious concernment;"[1] yet later, Rhode Island by statute excluded "papists" from its established equality.[2]

As to the founders of the colony of New Plymouth,—those "Pilgrim Fathers," of whom we hear so much,—they allowed that a man ought not to be deprived of his "life, limb, or property," except with certain preliminaries "or by virtue of the known law of God"—known, of course, to themselves alone.[3]

They made heresy a statutory crime, subjecting the offender to banishment;[4] they punished with death any one who should "wilfully deny the true God or his creation and government of the world"—meaning their God and their theory of his works,[5] quoting Lev. 24: 15, 16 as their authority for passing such a law.

They disfranchised everybody who was not "sound in the fundamentals of religion," meaning everybody who did not accept *their* religion in its entirety, and also whoever should alter his views on this subject so as to become "an apostate."[6] They fixed the death penalty for any one who, "having had the knowledge of the true God," afterward worshiped any other than "the Lord God,"[7] meaning *their* God; and they would not allow even *him* to be worshiped in any manner not ordained by themselves; thus, they forbade any public

1 Bancroft's "History of the United States," Vol., ii, pp. 63, 64; "Story on the Constitution," Vol. i, p. 97. It has been well said this charter did not limit freedom to religious sects alone; it granted equal rights to the paynim and the worshiper of Fo. To the disciples of Confucius it was, on the part of a Christain prince, no more than an act of reciprocal justice; the charter of Rhode Island was granted just one year after the emperor of China had proclaimed the enfranchisement of Christianity among the hundred millions of his people. See Bancroft's "Hist. of the United States," Vol. ii, p. 62.

2 *Id.*, Vol. iii, p. 69; "Story on the Constitution," Vol. i, p. 98, and authorities cited.

3 "Laws of the Colony," 241. 4 *Id.*, 248. 5 *Id.*, 244.

6 *Id.*, 258. 7 *Id.*, 244.

meeting to be held without the approval of the "General Court,"[1] and especially the holding of religious assemblies "in any way contrary to God and the allowance of the government."[2] They generously proffered the "assistance" of the central despotism — the "General Court" — to towns in "setting up churches," in order that "faithful preachers" might be secured[3] — meaning thereby to prevent the towns from selecting their ministers without submitting to the judgment of the "General Court" the orthodoxy of their choice; — and forbade the setting up of any church "different from those already set up and approved, without the consent of the government," under any penalty the General Court might see proper to inflict.[4]

They made it a penal offense for a Quaker to come within their domain, threatening such a one with whippings, the stocks, and death;[5] they also punished those who should bring Quakers into the colony;[6] or entertain them;[7] required all good citizens to give information of the whereabouts of Quakers, and authorized anybody to arrest them.[8] They would not allow these people to vote,[9] and seized without process, their books,[10] and their horses.[11]

1 *Id.*, 103. There is no adjective "religious" before the noun "meeting" in this law. Under its provisions the common law right of Englishmen "peaceably to assemble" at any time and "petition for the redress of grievances" was taken away at one fell blow, and no meeting of any kind whatsoever could be held by the unfortunate people of Plymouth Colony, save by the gracious permission of that cruel and relentless central despotism, the "General Court." In this regard, as in many others, the position of the Plymouth colonists under the sway of the "noble representatives of freedom," who guided and controlled their destinies, was not one whit better than that of the Russian peasants in the hands of the czar's "administrative police."

2 *Id.*, 93.

3 *Id.*, 87.

4 *Id.*, 92.

5 *Id.*, 126, 130.

6 *Id.*, 102, 127.

7 *Id.*, 103, 126.

8 *Id.*, 125, 131.

9 *Id.*, 114.

10 *Id.*, 122.

11 *Id.*, 127. The reason given for depriving the Quakers of their horses is that by the use of those animals they were enabled to escape from the officers "who might otherwise apprehend them." But, as in most other actions of the Pilgrim Fathers, it is probable that cupidity was a leading motive for this confiscation. There appears to have been a scarcity of horses in the colony, as the towns are recommended to engage in the business of breeding them ("Laws of the Colony," 103). It was, of course, far more agreeable to men of the Pilgrim Fathers' cast of mind to keep up the supply by seizing on the possessions of heretics, than by undergoing the trouble and expense of breeding them, thus "spoiling the Egyptians," carrying out their great principle that "The just shall inherit the earth," and combining a religious duty with pecuniary profit, after the well-loved fashion of their kind.

The case of these New England Puritans will be recurred to hereafter. Enough has now been adduced to show that we cannot associate the recognition of religious equality, in its true sense of the absolute equality of all religions and of no religion, before the law, with the establishment of any American colony. A number of features in our jurisprudence utterly inconsistent with religious equality are pointed out in "Church and State," such as the exemption of church property from taxation, etc. A few facts may be mentioned here to show how vain and unsubstantial is the boast that religious equality is established and guaranteed among us even at the present day.

There is nothing in the Federal Constitution to prevent the setting up of an Established Church by the States; but all powers not granted on one side or prohibited on the other by that instrument are expressly "reserved;" and thus the power of setting up an Established Church is expressly guaranteed to every State. Only five States of our Union have thought it worth while in their constitutions to guard against the establishment of a State Church. These are Alabama, Iowa, Louisiana, New Jersey, and South Carolina. Twenty-six States, however, provide against any "preference" by the State of one form of religion over another. Under the very vague language of many other Constitutions, it may be doubted whether the establishment could not be set up at the caprice of any legislature. In no less than twenty-seven States is a religious test provided for office-holders.[1] Only seventeen States prohibit the absurdity of the *voir dire*, or examination of a witness as to his religious belief, in order to determine his reliability as a witness to the facts at issue. But the very existence and occasional practice of the *voir*

1 Vermont declares in her Constitution that every sect ought to observe the Lord's day, and Delaware that every sect should keep up some sort of religious worship. In order to hold office in Pennsylvania and Tennessee, a man must believe both in a God and a future state of rewards and punishments; but belief in God alone is enough for an office-holder in Maryland, though not for a juror or witness.

dire shows that we are not one whit more logical on some subjects than were our ancestors one thousand years ago. For the *voir dire* assumes that a man's statement about his belief is necessarily true; and if his statement of it includes certain elements, then it assumes that *because he has told the truth* on this subject when *unsworn*, therefore he cannot be relied upon to tell the truth on another subject after *swearing* to do so! It is plain that men who practice the *voir dire* cannot afford to smile at men who roasted their fellows to convince them of dogmatic truths.

CHAPTER IV.

The Plymouth Brownists who set up an Established Church and the Sunday Law in America — Origin and Character of the Brownist Sect — Their Treason in England — Their Departure from England and from Holland altogether Voluntary — Their Freedom in Holland — Except in the Matter of Bullying the Dutch, they came to America as Fugitives from Nothing, but to Make Money out of the Fisheries, and to set up an Established Church of their Own.

It has been said that the importance attached to the compulsion of belief, led to the elaboration of the complex creeds now recognized among Christians. It also led to the multiplication of sects. Strong-minded, zealous, earnest men, with their own salvation and that of their fellows at stake, could not be kept, even by fire and sword, from pondering over matters of faith, and announcing their conclusions. And, apparently, it was impossible to announce any conclusions, however crude or monstrous, without securing enthusiastic disciples, eager for the crown of martyrdom. In the multitude of its sectarian divisions, popular Christianity stands peculiar among the religions of the world ; and the number of these divisions is still increasing.

In the importance which they attached to belief, the Christians of Great Britain were fully abreast of their brethren on the continent. When the English Parliament finally severed the connection of the State Church with the See of Rome (1558), the various shades of religious opinion were almost infinite in number. Elizabeth, who was then made

the pope of the new dispensation, like Henry VIII, looked on the separation as a political rather than a doctrinal movement. There were perhaps no tenets of Rome to which she did not subscribe, except the theory which gave the Roman pontiff the right to meddle with the civil affairs of her kingdom. From her attachment to Rome's gorgeous and stately ceremonial, and her inclination toward the doctrine which it symbolized, to the intense aversion felt by the "low-church" clergy for every particular of Romish service and distinctive dogma, it was a long way; and the intervening ground was filled with men whose views were more or less a compromise between the two extremes. There were a number of lay believers separated in fact, if not in law, from the establishment, before the formal repudiation of Rome's authority by the latter. But, on the other hand, many of very "advanced" opinions remained in clerical positions. The setting up of the new order of things precipitated a revolt, and undoubtedly helped to bring about the disaster of the reign of Charles I. Many influential clergymen who, if undisturbed, might have lived and died within the fold, having tendered to them an "oath of supremacy," that is, an oath which recognized Elizabeth as the "governess" of the Church, gave up their livings, and at once assumed the position of martyrs to principle. These were the "non-conformists." They formed a most important addition to the forces of discontent.

The "low-churchmen," who remained in nominal connection with the establishment while more or less openly repudiating some of its doctrines, were known by the general name of "Puritans,"[1] or "the Pure," a name they gave themselves in the true spirit of the Pharisee, thanking God they were not as other men. Yet there was in the early days of Puritanism something about it attractive to the earnest-

1 The Puritan sect, properly so-called, was a party within the Church of England, that objected to the cross in baptism, the ring in marriage, the use of the surplice, and the bowing at the name of Jesus.—"*Hume's Hist of England*," *Vol. iv, p. 228.*

minded. It appeared a revolt against formalism, an appeal to conduct rather than ritual as the real business of religion. It was a reaction, timely and serviceable, from the frivolity and inconsequence of the day. But it seems to be the fate of those who attack forms as such, to end by becoming themselves the slaves of forms, only of another sort. Witness the case of Fox and his Quakers. Witness the Puritans who drifted into Brownism.[1]

The Brownist sect did not arise until some time after Puritanism, in its larger sense, had become an important factor in the English State. Brown, its founder, was of what is called "good family;" but of a temper most violent and implacable, and a self-conceit which made him regard every slightest utterance of his own as a direct emanation from Deity. His domineering spirit would brook no contradiction or interference, and constantly found expression in acts of violence. He habitually beat his wife, though he was careful to explain that he beat her "not as his wife, but as an accursed old woman." About 1550 he began to preach a separation of the Church from the State and an independence of secular authority. He does not appear to have objected to the doctrines, but merely to the forms, of the English Church.

Here, again, he expressed the essence of Puritanism. Pharisaical sanctity is always accompanied by an overweening regard for externals. To cleanse the outside of the platter has from the beginning been the great objective point of Puritan morality. Brown went from England of his own

1 It cannot be too often repeated and emphasized that herein lay the radical distinction between Puritanism proper and Brownism,— that Puritanism was in its essence a lawful, legitimate movement *within* the Church of England for the simplification of doctrine and especially of ceremonial; whereas the corner-stone of Brownism was *separation*, or the setting up of a new church, and this as a mere first-step toward the destruction of the establishment, then, as now, an integral part of the British Constitution; nor, as will presently appear, had the Brownists any idea of stopping at this point Having destroyed the English Church, and set up a new organization in its place, they next proposed to destroy the government, and erect a new and wholly ecclesiastical polity upon its ruins.

free will and established himself with a small congregation in the island of Zealand. But not even the Brownists could stand Brown. His uncontrollable violence, and tyrannical egotism "broke up" his church, as it would have done any church or government with which it was strong enough to cope. He returned to England, and "sold his birthright" to the enemy "for a mess of pottage," that is to say, he "conformed," and accepted a rectorship under the Church of England. The position was a sinecure. He had a curate to do the work, while he enjoyed the "living."

From our standpoint, his case was not so bad as it was from his own. As has been said, he had never found any fault with Anglican doctrines, so that there is no ground for charging him with sale of conscience on such points. But we must remember that Brown made points of conscience out of mere ceremonial practices, and these he undeniably bartered away. True, he boasted that there was but one church in England, and that was his church, and the ceremonies therein were of the simplest. But his every utterance shows that his views were unchanged when he accepted the charge at the hands of an organization which enforced the ceremonies he had so bitterly denounced, not, indeed, as matters of faith, but still as things which were excellent and desirable in themselves, and which her priests were pledged to observe on all convenient occasions. So that he did in that acceptance —

> "Crook the pregnant hinges of the knee
> Where thrift might follow fawning."

His violent temper held him till the last. In disputing with a constable about taxes "he proceeded to blows," and afterward outrageously insulted the justice of the peace before whom he was arraigned, and was sent to jail, where he died at the age of eighty years, "boasting on his deathbed that he had been in thirty-two different prisons."

We have said that Brown advocated a separation of the Church from the State, that is to say, a separation of the English Church from the English State. But a separation of *Church and State* was no part of his scheme. On the contrary he proposed to abandon the Episcopal organization, and make each congregation altogether independent of the rest, and then to place all the authority of king, Parliament, and magistrates in the hands of the rulers of each church,—in a word, to overthrow the government of England, and substitute therefor a number of small hierarchies, wherein there should be not merely a union of Church and State, but an absolute identity of the two, modeled after the system of the Jews in Palestine. And pending this reconstruction of the British Constitution, Brown inculcated as a sacred duty forcible resistance to the law of the land.

Of course these theories of Brown's were treason pure and simple. Neither his "apostasy" nor his death prevented their spreading. And when we consider the *Zeitgeist*, we are amazed at the leniency with which the advocates of such doctrines and those who applauded them were treated. A great deal has been written and declaimed about the cruelties inflicted upon the Brownists and the oppressions they endured "for conscience' sake." But when we come to examine the details, we find no such horrible deeds as those which blot the history of the Brownist Church in America. It was not their "freedom to worship God," but their license to advocate the disintegration of the State which the government, as in duty bound, denied to them.

We have seen that, by reason of the identification of Church and State, heresy and treason were at all times in danger of being rendered identical. The distinctive point about the case of the Brownists is that they based their treason on their heresy or faith, and openly avowed that they were divinely inspired to defy the law and the authorities. That there should be no public worship save that which the

State ordained and regulated was a part of the accepted union of Church and State. That meetings at which resistance to the State itself was preached as an article of religious faith were proper objects for police interference, was taken for granted. Such were the meetings of the Brownists; such were the doctrines they taught. The extent of "persecution" they suffered was the breaking up of these meetings. Nobody was banished, hung, or mutilated for taking one view of the gospel rather than another, so long as he neither taught nor practiced treason.[1]

It is certain that at the time of their departure from England the Brownists had little to complain of. In James I they were blessed with a sovereign to whom it was only less obnoxious to employ violence than to suffer it,—peaceable, kind-hearted, fond of books, vain of his scholarly attainments, courting a tranquil, easy life. If the Brownists had been content to prate of abstractions or to exercise their "freedom to worship God" in quietness and peace, it is not thinkable that James would have inflicted any worse punishment on them than to address them a pamphlet explaining the precise delineations between orthodoxy and heterodoxy.[2] It has been observed that the animosity of the Brownists was directed rather against forms than doctrines. It may be added that, so far as they possessed a definite theology, James I was not likely to find much fault with it. He was strongly inclined toward the Genevan school, of which the milder Puritanism was an outgrowth, and of which Brownism was a closer copy than many "Calvinists" of our day like to admit.

1 These meetings were secret and held in private houses. The Brownists were never punished for frequenting other places of worship than those of the Established Church, because none such existed, and no Protestant sect assumed, or pretended to the right of erecting them.—*Hume's "History of England," Vol. iv, p. 351.*

2 It has been well said that "had the king been disposed to grant the Puritans a full toleration for a separate exercise of their religion, it is certain, from the spirit of the times, that this sect itself would have despised and hated him for it, and would have reproached him with lukewarmness and indifference to the cause of religion."—*Id., p. 350.*

But the Brownists were not men to improve under indulgence. The more license they had, the more reckless and anarchical they grew. Extravagant as the claim seemed to their cotemporaries, inadmissible as it may seem even to us, it was by no means sufficient from their standpoint that they should be permitted to be a law unto themselves. It was essential to their scheme of life that they should be a law *to all others* with whom they were brought in contact. Under the existing state of things it was impossible that they should be this in England; nor was it likely that the existing state of things would in the near future be altered favorably in this regard. To all but a few the doctrines they held were as repulsive as the manners and character of their advocates, which is putting the case very strongly indeed. The time was coming when fanaticism as deep and relentless as theirs, though tempered with worldly wisdom, was to rule over England. But they would have proven a thorn in the side of Cromwell himself. The strong, centralized organization which he set up would have been as obnoxious to them as the government which he overthrew. And, while, as we shall see hereafter, their leaders were perfectly capable, in this regard as in others, of abandoning their professed principles in the interest of their own aggrandizement, yet Cromwell would have had to confront the alternative of allowing those leaders to rule the commonwealth and "run" it, or of being assailed with the same revolutionary invectives which they launched so freely at king and Parliament alike.

In short, it may be truthfully said of these Brownists, that their principles and practices rendered it absolutely necessary for them to live alone, inasmuch as they could by no possibility live in peace with other men. Brown himself had recognized this fact by leaving England. It was some thirty years later that a second party of his followers determined to imitate his example. John Robinson was at their head. As with the movement led by Brown himself, their leaving was

an act of voluntary exile and not in the least the result of banishment or induced by persecution. There is every reason to believe that the kindly-hearted James was sorry to have them go. His subsequent correspondence with them is marked by fatherly regard on his side, and hypocritical subserviency on theirs.

John Robinson and his people went first to Leyden. They could have their own way in Holland, as they could in England, in their own affairs, just so far as that way was compatible with the preservation of order and the supremacy of law. Further than this they could not go in either country. The Holland churches were no further removed in doctrine from the Romanists, than the low-church school of Anglicanism to which James himself belonged. But the Brownists were comparatively safe in Holland from the sight of those ceremonial observances which to hate was with them an essential of religion. Neither hosts nor guests were, however, content with the situation. The Dutch were poor and absolutely "set" in their ways. The Brownists were avaricious and bent on establishing their theocracy. The stories of the enormous fortunes gained in the fisheries of North America, and the opportunity of there realizing their dream of a united Church and State, led them to determine to remove hither.

We shall not wonder that when the Brownists were taught to regard themselves as a chosen people, and to liken themselves to the Israelites of old, they remembered that while the mission of these last was the conservation of the faith, it was a part of their destiny to spoil the Egyptians, and to enter the land of the Canaanites and possess it. It was a fundamental article of the Brownist creed, that the Brownists were the just; and it was written that the just should inherit the earth. Moreover, those who did not agree with them could not be overcome without the command of material resources. The acquisition of power, therefore, was a

sacred duty, in order that the children of Belial might be destroyed and a kingdom of this world erected in the Master's name. The spirit of the early bishops, who effected the first union of the Christian Church with the State was thus working perfectly among the men who set up an Established Church, on American soil. And it is to those men that we owe our American Sunday laws. Every Sunday law in America is the work of this spirit, as was that first Sunday law which Constantine made for Europe.

CHAPTER V.

The Character of the Massachusetts Brownists who Confirmed the Established Church and the Sunday Law in America — They were False to their King in the Obtaining of their Charter — And Guilty of Treason in Setting up their Government, and Establishing the Brownist Church by Law — Their Charter Righteously Revoked — A New One Granted and How They Defied It — The Base Falsehood and Hypocrisy of their Replies to Questions on this Point — False to their King and False to the Natives, they Prove at Last False to their own Fellows — And Violate the Fundamental Principles of their "Congregational" System.

We have seen that the Brownists had no notion of a separation of Church and State, but, on the contrary, that their goal was an absolute identification of the two. This was unquestionably their founder's teaching, and was favored by their leading and representative men, and it is more than probable that they would have carried out this idea completely, and made their preachers their magistrates and judges *ex officio*, but for the presence among them of a small yet alert minority who were not prepared to go to that extreme in a formal and deliberate manner.

But, if we waive questions of mere form, and admit that the civil administration was not ostensibly and in its visible machinery identical with the ecclesiastical establishment, we may truthfully affirm that in the constitution of the Plymouth colony the indentification of the Church with the State was as complete as it was among the ancient Hebrews, to whom

it was the greatest glory of the Brownist to liken himself. And though, as already observed, in no American colony did religious equality exist, it being no more understood in America than it was in Europe, yet this identification, even in spirit, is found nowhere except among the Puritans. So far, then, from being the apostles of religious liberty in America, they were precisely the reverse. They were the apostles of religious tyranny and absolutism, the representatives of the idea of an established church, as their descendants are to-day.

If we are shocked to read of the sayings and doings of many of the bishops who effected and manipulated the first union of the Church and State, it must be conceded that the conduct of the apostles of that union in America is equally abhorrent.

Their charter made of the Brownists a corporation under the title, "The Governor and Company of Massachusetts Bay in New England." It named the first officers and provided for the election of their successors "by the freemen of the company." And it authorized the making of rules and ordinances, etc., "according to the course of other corporations." In short, it created an ordinary trading body, except that it granted the officers in New England power "to resist invasion." Neither its express provisions, nor the circumstances of its granting admit the hypothesis that it was intended to create a political corporation, or confer political rights upon any body. The corporators, or those who might afterward join them, had not the essential powers of a government. They could neither levy taxes, assemble representatives of the people, nor establish courts. As to the actual settlers, they possessed no rights whatever under the charter, except their title to the land they purchased.

The Massachusetts Brownists began their treachery in the new country by establishing Brownism, under the guise of a "Confession of Faith," and banishing two men who in-

sisted on worshiping according to the English rite; and this, notwithstanding that the establishment was part of the law of England, and they had accepted their charter under a pretense of fidelity to that church, and one of the charter's objects,— its leading object according to its own language,— was to enable them to make converts to Christianity (as taught by the English Church) among the Indians.

Shortly afterward, finding that their colony was not prospering as they had hoped, and that their contemplated independence of England was not easy to secure while the corporation was located on English soil, they resorted to an act of brigandage — it was little less — to facilitate their schemes. In defiance of law, precedent, and moral right, they transferred their charter, and their corporation with it, bodily from its legal *habitat* of England to Massachusetts. After this illegal and revolutionary proceeding, they hesitated at no act of treason, no violation of their charter's express provisions.

The corporation was authorized to make "laws and ordinances," etc. From the very nature of a corporation, these could only concern its business,— that of trading and converting the Indians,— or be such as were reasonably necessary for the carrying on of that business under the peculiar circumstances. Yet the Massachusetts Brownists proceeded to set themselves up as a practically independent government, preposterously, and of course insincerely, basing their right to do so on a charter which had created them a business and missionary corporation. They were allowed to make "rules and ordinances and impose fines, etc., according to the course of other corporations." Yet they proceeded to make *laws*, so-called and so-enforced. They were expressly forbidden to do any corporate act, contrary to the laws of England; yet not only did they proscribe the English Church, which was established and protected by those laws, but in any other respect which seemed good to them they set those laws aside in so many words, and defied them in action.

Thus, a charter whose purpose was the extension of the authority of the English State, and the advancement of her material wealth, as well as the bringing of savage tribes within the folds of her Church, was perverted into the means of setting up a new State and a new Church, inimical to her establishments of both kinds.

After a long and merciful forbearance on the part of the crown, the charter of the Massachusetts Brownists was justly declared forfeited on account of the revolutionary proceedings under it and the gross and flagrant violations of its letter and spirit (1664). In 1691 a new charter was granted by William and Mary, which embraced the Plymouth colony. By this, many powers of government were bestowed, including the raising of taxes by the "General Court," and passage of laws and ordinances, with the old proviso, "so as the same be not repugnant or contrary to the laws of England;" and it was expressly provided that there should be "a liberty of conscience allowed in the worship of God to all Christians, except papists."

As before, the Brownists immediately proceeded to legislate in direct defiance of their charter. They provided that no man should be deprived of his honor, or good name, or wife, or children, or estate except under an express law, "or, in case of a defect of a law in any particular case, by the word of God;" and, as they alone were to decide what was the "word of God," as well as its application to "any particular case," they, of course, in making this provision, practically asserted their independence of the laws of England, and added a system of jurisprudence contrary and repugnant to those laws, namely, the system of the Established Church of Brownism, their adherence to which had been so repugnant to the laws of England that it had been the cause of their leaving that country.

Moreover, the meaning and application of the "word" were left, by implication, to the caprice of local magistrates and juries in many cases; it being specified that the admin-

istration of punishment in capital cases, of dismembering, or banishment should be according to that word, "to be judged by the General Court." So that a man might lose all his minor rights, such as the enjoyment of his property, or the society of his wife and children, whenever a single "country justice" or hostile neighbor of the Brownist persuasion considered that he had violated "the word of God," whereby the Brownist understood the Mosaic code; and he might be banished, or hung, or dismembered whenever the assembled Brownists of the General Court arrived at the same conclusion. And all this, without any reference whatever to the laws of England, but in express defiance of them, and by the deliberate application of another set of laws to cases where "defects" were found in the laws of England — that is to say, to any cases wherein the laws of England did not authorize the manifestation of the cruelty and bigotry for the sake of whose free exercise the Brownists came to America. Thus "wager at law" was not allowed, but "according to law *and according to the precept in Exodus* (22 : 7, 8); and, in criminal cases, where the law prescribed no penalty, the judges were to inflict penalties "according to the rule of God's word."

In 1646 the Massachusetts Brownists were called upon to show the conformity of their law with the law of England. Their answer is full of that hypocrisy which is an essential characteristic of their system, and is as perfect an illustration as could be found anywhere of the destructive effects of Phariseeism on the instinct of veracity.

They protested that they were true and loyal subjects, though they had made loyalty to the king and a resistance to their own usurpations a capital offense.

They asserted that their law of inheritance was like that of England, and the elder son was "preferred," meaning to have it understood that they had adopted the law of primogeniture; whereas they had in fact done no such thing; for

estates of deceased persons were partible, and while the eldest son was "preferred," his preference extended merely to a right to two portions of the number into which the estate was divided.

They quoted *Magna Charta's* provision that the Church shall "enjoy all her liberties;" and claimed that their own rule that "all persons orthodox in judgment and not scandalous in life may gather into a Church-estate, according to the rules of the gospel" was of similar import; yet they knew that the "Church" referred to in *Magna Charta* was the Established Church of England, and that that church enjoyed no liberty whatever among them; that no professor of her doctrines or priest of her ritual was "orthodox" in their eyes; that it was a crime to perform her services within their domain; that the "rules of the gospel," as interpreted by them, did not allow any persons to "gather into a Church-estate" except Brownists.

They suppressed the fact that they had set up a qualification of the franchise — church-membership — utterly unknown to the laws of England; and that this was not merely membership in some church, or even in some Christian church, but was membership in the State Church. Such a qualification would have disfranchised every one of them in England, had they been honest enough to avow that separation which they designed to establish here. As their State Church was Brownism, it disfranchised every dweller among them who did not belong to the Brownist Church, including, of course, every adherent of the Church of England. They "pointed with pride," as the politicians say, to their requirement that "no injunction should be put upon any church, besides the institution of the Lord," though they knew that their "General Court" made no distinction whatever between the institution of the Lord and the institution of Brownism.

And this brings us to the consideration of another specimen of the hypocrisy and double dealing of the leaders of

the Brownists. False to their king, and false to the natives, they were likewise false to those whose spiritual and temporal guides they professed to be, and false to themselves in the betrayal of the fundamental tenet of their sect. They professed an adherence to the principles of Anglicanism till they had obtained under false pretenses the privileges they desired. But when the application of the Brownist theories of Church and State organization threatened to render others independent of them in religious matters as they had rendered themselves independent of the government and church to which they professed allegiance, then without the slightest scruple these "apostles of religious liberty" repudiated the essential principle of their founder's teaching.

The very corner-stone of Brown's system, his one great purpose and aim, was to secure recognition of the right of any congregation to organize and elect a pastor without interference from without; and, after organization, to preserve the absolute and complete independency of each church, its perfect isolation, the absence of any central control or supervision whatever. But neither of these things was permitted by the Brownists of Massachusetts. Among them no church could be founded without permission of the government. Churches were excommunicated and towns disfranchised, for rejecting pastors selected for them by the "General Court." This centralization of authority was due to the fact that some who were not Brownists, desiring to secure the privilege of the franchise, adopted the obvious course of organizing themselves into congregations, and thus becoming entitled as "church-members" to the ballot. The danger to the political supremacy of the Established Church of Brownism was considered a sufficient excuse for the abandonment of Brownism's fundamental tenet.

CHAPTER VI.

The Character of the Plymouth Brownists, who Established the Sunday Law in America, further Examined.

It is important to remember what is often forgotten or deliberately ignored in the discussion of our subject, namely, that the idle and cheerless Sunday is the great distinctive tenet of Brownism, and that it distinguishes Brownism from Catholicism, Lutheranism, and Calvinism as well. The practice of Catholic countries shows that the maintenance of such an "institution" forms no part of that church's purposes. This practice remains now substantially what it was in Luther's time. His Protestantism included no objection thereto. Calvin formulated no proposition even remotely tending to set up the obligation of an idle, cheerless Sunday among the duties of a Christian life.

But what is even more important, and what is even more often forgotten and more deliberately ignored, is this, that, widely as the dogma of the idle and cheerless Sunday separates the Brownist from non-Puritans of every sort, it did in the beginning separate him scarcely less widely from all Puritans who were not Brownists. Brownism was indeed a grotesque English exaggeration of early Scotch Protestantism. In time, it reacted on Scotch thought. But the men who trained with John Knox were not tainted with this Brownist idea. They did not know the idle and cheerless Sunday which the Brownists brought to America. Knox himself wrote letters, traveled, and gave set entertainments on this day. Only by degrees, as Brownism spread, and the extraor-

dinary child of Puritanism devoured whatever there was reasonable, sincere, and good, in the parent, did the idea of an idle and cheerless Sunday prevail. Only after Brownism had gotten control of the British Parliament was the first step taken, to set up the idle and cheerless Sunday as an English institution.

And, as Brownism is responsible for the idle and cheerless Sunday of England and Scotland, so it is for the establishment of that "institution" on American soil; and this establishment was only possible, as its maintenance is only possible, through the union of Church and State which was effected under Brownist auspices. The spirit which gives birth to this kind of legislation, and seeks its enforcement, is the spirit of Brownism, and nothing else. The variety and strictness of its requirements are determined by the extent to which Brownism prevails in each community.

As, according to the very highest authority, an evil tree cannot bring forth good fruit, it is not to be expected that such a tree as that of Brownism should give birth to anything in the way of legislation which is desirable or worthy of imitation in the interests of humanity. But from Brownist ideas of the union of Church and State, and from Brownist methods of legislation, America has, in the main, fortunately shaken herself free. The conspicuous exception which forms the topic of this essay is found in the Sunday laws. While Sunday laws were among the enactments of other than Brownist colonies, they were one and all modeled after the Sunday laws which Brownism fastened upon the English people. While members of many communions have a superstitious reverence for these laws, yet, by whatsoever names they call themselves, all such people are the intellectual children of the Brownists, the heirs of their spirit, the perpetuators of the theory of a united Church and State which the Brownists planted in America.

A word may be said here in regard to the basis of this conception of an idle and cheerless Sunday which constitutes an essential dogma of Brownism, and distinguishes it from all other phases of Christianity. The Brownists elevated what they called the "observance" of this day to the rank of a leading, if not *the* leading virtue of a Christian life. And they developed a theory of the proper nature of this observance which it has been often asserted that they borrowed from the Jews, but which, as will presently appear, and as cannot be too often or too strenuously insisted, was, in its entirety and symmetrical completeness, a conception original with themselves — in fact, whatever its merits, an absolutely new discovery or invention in the world of mind.

Religious feasts and fasts, sacred days of one kind or another, are common to all systems of belief. The distinction between a feast-day and a fast-day is not merely one of dieting. To the masses the feast-day is a day of general rejoicing, of holiday-making and recreation, of whose "observance" some special religious service forms a part but by no means the whole. A good illustration is the common English way of observing Christmas, which consists in going to church in the morning and the "matinee" in the afternoon. On the other hand, the due observance of a fast-day involves some self-denial in other than the matter of food, an extra seriousness, and if retirement into the closet be not practicable, then a confinement of activity to the necessary duties of business.

Nobody has ever denied that Sunday has been observed as a feast-day and not as a fast-day by all who have observed it from the beginning. It is so now on the continent of Europe; it was so in England when the Brownists appeared with their new doctrine. By common consent work was suspended and the churches were filled in the morning and often in the evening as well. The intervening time was spent

in play and sport. It was not the *observance* of Sunday, then, but the *manner* of its observance, which it was the Brownist's mission to enforce. It has been said that work was generally suspended by common consent, but *play* was not. That Sunday *play* and not Sunday *work*, was the special object of the Brownist's antipathy is sufficiently shown by the history of the controversy. King James's famous proclamation announced to his subjects that they should not be molested in their Sunday sports; evidently the question of interfering with work was not broached because as a matter of fact work was voluntarily laid aside. During his reign a bill was introduced to prohibit, not Sunday work, but Sunday play, which the king requested Parliament not to pass, as it was inconsistent with his proclamation. And afterward when the very first Brownist Sunday law was enacted, it contained no reference to work whatever, but merely forbade the going outside of one's parish on Sunday to engage in "bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes."

But here comes in the originality of the Brownist, for which neither friends nor foes have hitherto given him his due credit. The Brownist never deliberately denied that Sunday was a feast-day. But he promulgated the extraordinary, and, as has been said, altogether original idea that the proper way to observe such a day was not merely to abstain from work but to abstain from play as well. The evidence is clear, not only from the early Brownist legislation, but from the laws of our States on this subject, that Sunday play always was, and is still, at least as objectionable to the Puritan as Sunday work. Nay, the conduct of those to whose activity the occasional prosecution of Sunday-law cases in our day is due, affords good ground for the assertion that of the two things they would rather give up the prohibition of work than the prohibition of play.

Here, then, is the great original and absolutely unique conception of Brownism — a feast-day to be observed by refraining from work and labor and from enjoyment as well! Not merely a Sunday of idleness *but a Sunday of idleness and gloom* is the ideal of the Brownist. If the conception is unique, the way in which he arrives at it is astounding. It forms in fact one of the most extraordinary chapters in the history of ideas.

PART II.

THE MORAL ASPECT OF THE QUESTION.

OBJECTIONS TO SUNDAY LAWS ON ACCOUNT OF THEIR INSPIRATION AND CONTENTS — THEY ARE IMMORAL AND DEMORALIZING IN EVERY ASPECT, AND AS EVIL IN THEIR RESULTS AS THEIR ORIGIN WOULD INDICATE.

CHAPTER I.

The Objection to Sunday Laws that they Promulgate the Falsehood that Sunday is "The Sabbath."

THE preceding chapters have been written with the view of discrediting Sunday laws in the United States as far as possible, by proving that such laws embody a union of Church and State everywhere, and that in this country they embody the union with the State, of a Church which, judged by the character and conduct of the men who established it here, is not a church to be selected among all others for the national church of America, if we should ever make up our minds to have such an institution.

Closely connected with the historic aspect of our subject is what may be called its moral aspect. The inspiration of these laws being a union of the Brownist Church with the State is evidently an un-American and undesirable inspiration. But we are now to examine this inspiration on its merits, and to discover from the records that the Brownist dogma, which is embodied in our Sunday laws, is a false dogma, and that, therefore, the Church united with the State by Sunday laws is a false church, built on quicksand, and not upon the "Rock."

To show that these laws are based on misconception and false pretense, and in their very birth are clothed with lies as with a garment, is surely to indicate a first and very serious objection to them. If religious dogmas are to be kept on American statute books, they surely ought not to be such as are refuted by the only authority relied upon for sustain-

ing them. If we are to maintain the union of Church and State in the Republic, let us at least have the Church honest and truthful in the teachings to which it asks the State to enforce a compulsory deference. Now the proposition in hand is that the Brownist Church is not honest and truthful in its dogma of the idle and cheerless Sunday, which it insists that the State shall force upon the people. Let us look at the record.

The Brownist began by rejecting all tradition, and in particular the traditional feasts and fasts of the Church, such as Christmas, Good Friday, Ash-Wednesday, Lent, etc. He made a specialty in fact of ostentatious disrespect toward all these anniversaries. The annalist of the "Pilgrim Fathers" tells with equal pride how they observed their first "Sabbath" in America, and how they were at pains to dishonor the Christmas that followed. Rejecting, then, all tradition and especially traditional feasts and fasts, the Brownist avowed that he held to the "written word" alone, meaning thereby the books recognized as canonical by the English Church, though he violently repudiated the ecclesiastical authority of that church, including, of course, her right to settle "the Canon of Scripture" and to say what "books" were, and what were not, properly included therein.

Calmly ignoring the trifling inconsistency of denying the jurisdiction while relying on the decree, the Brownist, then, appealed to his "written word" for the sacred obligation of his idle and cheerless Sunday. He was thus compelled to face a dilemma from which a less resolute fanaticism than his might have recoiled. For nothing is more completely and essentially a matter of tradition than the observance of Sunday. In the "written word" by which the Brownist declared his willingness to stand or fall, there is absolutely no mention of the day whatever, except as a calendar date, under the name of "the first day of the week;" for no honest person who knows anything of the subject, will indorse the de-

liberate falsehood printed in the American Sunday-school Union's "Bible Dictionary,"—that Sunday is alluded to under the name of "the Lord's Day" in the Bible,—any more than he will indorse that other deliberate falsehood printed along with it,—that Christ transferred the obligations of the fourth commandment to Sunday.[1] Nowhere in this "written word" is there the slightest reference to Sunday as a "holy day" or the faintest suggestion regarding an obligation to observe it in any manner, or for any reason whatever. In fact, there is no injunction to observe any weekly anniversary but one in the Bible; and that day bears a similar relation to Sunday to that which Monday bears, being the next day before it, as Monday is the next day after it. And if that injunction had named the *second* day of the week as it does name the *seventh* day, there would have been just as much reason for applying it to the first day as there is in its actual relation.

But difficulties like these do not affect minds of the Brownist stamp. As Sunday was not mentioned as "holy" in the Bible, and as only one day was so mentioned, the Brownists took the name of that day and applied it to Sunday, which thus, by a mere change of nomenclature, became "the Sabbath." Thus, when the Sunday law of 1621 was under discussion, it was proposed to entitle it "An Act for the Better Observance of the Sabbath day, commonly called Sunday." One rash defier of the Brownism which was then gradually supplanting the English Church as a State establishment, and had already risen superior to the calendar, suggested that as *dies Sabbatorum* was Saturday, the proper title of the bill would be "An Act for the Better Observance of Saturday, commonly called Sunday." For this simple amendment in the interests of verbal accuracy, he was reprimanded on his knees and expelled from the House of Commons.

[1] The deliberate falsehoods printed in the "Union Bible Dictionary" regarding Sunday and the Sabbath are considered in Chapter III of this part.

Now though the word "Sunday" does not occur in the English version of the Bible, the word "Sabbath" does, as well as the plural form "Sabbaths." And both the singular and plural are used only in connection with the Mosaic cult.

The reason why the other Jewish anniversaries have been neglected, and the weekly day alone regarded by Christians, is obvious. The weekly Sabbath alone is mentioned in the ten commandments. All Christians believe that the Jews were the custodians for centuries of a body of divine truth for the benefit of all mankind. How much of what was in terms delivered to them, is literally binding for all time and all men, has been a matter of dispute; just as among the Jews themselves there is a difference of opinion as to what was intended to be confined to the stay of the people in Palestine, and what was designed as law for the race forever. There is a common consensus as to nine of the "commandments" that they are "of perpetual obligation." The Brownist's peculiar insistence for one half his Sunday — the idle half — is that the other, or fourth commandment, is equal to the rest — that it is of universal application. Many careful students and clear thinkers agree with him so far; but none outside of those sects who are permeated with the spirit of Brownism imagine that it can have any application to any other day than the day expressly mentioned in it, that is to say, the last day of the week. Hence council after council of the early Church, in passing regulations for the observance of Sunday, speaks of it by its common name in those days, *dies dominica;* they would, in fact, not have been understood to refer to anything but Saturday if they had mentioned *dies Sabbatorum*, for the simple reason that that was its name in those days, as it was in the days of the Brownists.[1]

1 See these decrees collected in "Sunday," etc. "The only words used in England before the existence of Puritanism were Sunday and Lord's Day."—"*Notes and Queries*," *July 21, 1855*. This interesting paragraph shows how "Sabbath" has never to this day lost its Hebraic signification in Spanish, Portuguese, Italian, and French. The Russian word for Sunday, the writer informs us, means "resurrection." The Germans call

We find then the serious objection against Sunday laws that in their origin and maintenance in the United States, they are the fruit of the falsehood of the Brownists that they rejected the feasts, fasts, and other "trumperies" of the "apostate church;" of the further falsehood that they rejected all tradition and held to the written word only; and above all, the insuperable objection that they promulgate the abject falsehood that Sunday is "the Sabbath."

Saturday *Sonnabend* (the eve of Sunday) or *Samstag;* this last word has apparent reference to the "assembly," or "Sabat" of the French. This was the witches' gathering, supposed in the Middle Ages to be held on Saturday nights. It is said that the habit the Jews had of meeting at such times gave rise to this superstition and to the use of "sabat" in the sense of "assembly" (Hebrew sabaoth). The fact to be noted here, however, is that in no language in the world save English as perverted by Brownism, would it be possible to speak of "Saturday, commonly called Sunday."

CHAPTER II.

The Objection to Sunday Laws that they Promulgate the Falsehood that Physical Rest is the Purpose of the Christian Sabbath.

THE Brownist dogma of the idle and cheerless Sunday, then, cannot be sustained by the only authority upon which it is professedly based,—the Scripture, the written word alone. Does the fallacy of this dogma lie altogether in the day to which it is applied? This is an important point, to which too little attention is paid by many Christians who are not Brownists. We come now to the second great objection to Sunday laws; namely, the un-Christian and anthropomorphic idea of Deity underlying the Brownist dogma, which those laws embody.

Mr. Tiedeman, in his "Limitations of the Police Power," has struggled, with a devotion worthy of a better cause, to reason others into disagreeing with his own evidently fixed and perfectly correct view that Sunday laws cannot be defended in the United States. Few phenomena in the world of mind are more interesting and entertaining than the manner in which this clear-headed and learned writer proceeds, on page after page, to knock himself down, as it were, with each fresh club he picks up in the way of an argument in favor of these laws. Nor is his plainly apparent consciousness that he *is* knocking himself down and bruising himself all the time without helping his cause one particle, or ever touching "the other fellow," who denies the constitutionality of these laws, by any means the least interesting and entertaining feature of the performance. We

are here only concerned with a very weak and fragile little piece of timber which he picks up toward the close of the exercises, and brandishes faintly, evidently without the slightest reliance on it as a weapon. Mr. Tiedeman then feebly suggests that the "fourth commandment" of the decalogue, on which all Sunday laws are based, "has been claimed with much show of reason" to have been originally a sanitary regulation, and yet more feebly intimates, rather than suggests, that therefore Sunday laws "in the ultimate analysis," as the chemists say, rest upon this same foundation.

Now, it has been claimed,—whether with or without the "show," or even the reality, of reason it is no business of this book to discuss, but at least by scientists of high repute,—that very many of the ceremonial observances of early religions had their origin in an observed physical advantage, gained by doing the things prescribed. They point, for example, to the frequent ablutions inculcated as a pious duty by Zoroaster, to the circumcision of the Jews, etc. And it must be admitted that many other requirements of the Mosaic code besides circumcision, are evidently to be referred to this idea of physical advantage, that is to say, are sanitary regulations, pure and simple. It will be shown hereafter that if Sunday laws *are* sanitary regulations, they are such as no American legislature has a right to prescribe. The question now before us is, Was the weekly Sabbath of the Old Testament prescribed as a sanitary measure? And a careful investigation of the subject seems to compel, from any candid student, a negative answer to this question.

We are told that Deity created the heavens and the earth "in the beginning." In the beginning of what? Not in the beginning of his own existence. Christian theological thought does not permit us to conceive of Deity save as existing "without beginning of days or end of life." Deity is not "semi-eternal," or half-eternal, an entity that once was

not, but shall endure forever. Deity is *all*-eternal — ever was, ever is, ever shall be. Nor, if we could distinguish between rest and work, as applied to Deity, — a point to be considered presently, — are we to suppose that these words "in the beginning" refer to a beginning of active manifestation of Deity, any more than they refer to a beginning of Deity's existence. "My Father worketh hitherto and I work" — "hitherto," doubtless of time and space and matter and all things as we know them. "In the beginning," therefore, can only mean "in the beginning" of the particular manifestation of divine power and activity which we now grasp through our senses, and which is known to us as "the heavens and the earth" — "the beginning of the heavens and the earth was their creation by Deity" — is the only possible significance of this passage for us.

And after an account of the successive steps of this creation of our heavens and our earth, we find the first allusion to a weekly Sabbath in these words: "And on the seventh day God ended his work which he had made; and he rested on the seventh day from all his work which he had made. And God blessed the seventh day, and sanctified it; because that in it he had rested from all his work which God created and made." Gen. 3 : 2, 3.

"As to the meaning of the word here translated 'blessed,' the commentators are much at variance," rightly observes Mr. Cox in his "Literature of the Sabbath Question," Vol. i, p. 3. Dr. Adam Clarke holds that it has the meaning of "to put honor upon" by "speaking well of."

The word translated "sanctified" really means "distinguished." The substance of the matter seems to be this: At the fiat of Deity time and space have their "beginning;" for a certain portion of time, the activity of Deity is manifested in calling into space and subjecting to the conditions of time, certain material substances and shapes. Afterward, this particular manifestation of divine activity ceases. The

time when this first manifestation ceased is justly spoken of as "distinguished." It is, indeed, the first great date in the history of our universe, "the day of days."

It has been said that this seventh day is "distinguished" by reason of the fact that a certain mode or kind of manifestation of divine activity then "ceased." It has not been said that the divine activity ceased. Here, again, as we cannot imagine that "in the beginning" refers to a beginning of divine manifestation, save as regards our universe, so we cannot imagine that the words "God rested" imply either a total cessation of divine activity or even anything more than a change in the mode of its manifestation in this heaven and earth of ours.

We shall see presently that it is impossible that such a rest as is here referred to can properly be observed or commemorated by physical idleness or the rest of men; and that no such manner of its commemoration is indicated by the statement that the day of that "rest" was "blessed" and "sanctified," is sufficiently proven by the fact that the curse of labor had not yet been laid on man and beast, and therefore a mere indulgence in physical rest could not have served as a means of "distinguishing" one day from another.

The next mention of a weekly Sabbath day in the Bible is found in Exodus 16, where we are told that no manna fell "on the seventh day," and so on that day the people "rested."

Later came the formal establishment of the Mosaic system, when four Sabbaths or "rest-periods" were enjoined upon the Hebrew people. There was the "jubilee year," which seems to have been mainly intended to give the land the benefit of "lying fallow," as we say, and to prevent its exhaustion by unremitting cultivation (Lev. 25 : 8, etc.), and the Sabbath of the seventh year, apparently designed for the same purpose. Verses 2–7. Compare Lev. 26 : 33–35 and 2 Chron. 36 : 20, 21. And though from the face of the

record it might be claimed that these two occasions were "set apart" for economical reasons alone, yet from other passages, and especially from the New Testament Scriptures, we know that there was a deep religious and spiritual meaning in these as well as in all the other ceremonies and ordinances.

That Sabbath of the tenth day of every seventh month, when not only were the people commanded to abstain from work under penalty of being "destroyed," but as to which it was proclaimed that the soul which was not then "afflicted" should be "cut off from among his people," was not only a religious Sabbath in the strictest and most exclusive sense of the term, but it was the only Hebrew Sabbath which corresponds with our notion of a "fast-day." See Lev. 23 : 27–32.

The only weekly Sabbath was explicitly established by the fourth commandment. Two reasons are given for its establishment. We are told in Genesis that the Deity "rested" from the work of creation on the seventh day ; and in Exodus this fact is adduced as the reason why the Hebrews shall rest on the same anniversary. Ex. 20 : 8–11. But in Deuteronomy the rest seems to be enjoined on this people merely in commemoration of their deliverance "by the Lord their God" from the hands of the Egyptians. Deut. 5 : 12–15. "The double sanction" says Dean Milman, "on which the observance of the day rested, reminded every faithful Israelite of his God under his twofold character of Creator and Deliverer."[1] But this deliverance from temporal bondage was intended to be but a stepping-stone to their knowledge of him as the Deliverer from a greater bondage than that,— the bondage of sin,— as the transactions at Sinai clearly indicate. The evident design of the Sabbath was therefore to keep in the minds of the people the knowledge of God as Creator and Saviour. Ex. 31 : 13, 17.

It is true that it was difficult for many of the Hebrews to rise to this spiritual view of the Sabbath. It would almost

1 "History of the Jews," Harper's Edition, Vol. i, p. 97.

seem that the temporal aspect engaged their attention to the practical ignoring of the spiritual; and that therefore the character of the day as a national anniversary, or holiday, in modern parlance, took precedence of the religious anniversary or "holy day." Yet admitting all this, yea more, admitting it even as the meaning of the institution, it still remains true that in neither of these aspects is there the slightest reference to physical benefit or sanitary considerations. It would hardly be pretended that the institution of a national anniversary like the Fourth of July was a measure for the conservation of the public health. And certainly no secular consideration can be connected with the purely religious requirement to rest in commemoration of the rest of Deity. And so, Mr. Tiedeman, while correct enough in saying that it "has been claimed" that the Hebrew Sabbath was a health ordinance — as, indeed, what has not been claimed at one time or another by defenders of Brownist Sunday laws? — goes wide of the mark in adding "with much show of reason," the fact being that the sanitary or economic object of the fourth commandment can be claimed neither with the slighest *reality* nor with the slightest *show* whatever of reason.

This, then, was largely the ancient Hebrew's view — that he had exhausted his duty under the fourth commandment when he abstained from work — when he indulged in *physical* rest.

But, now, should the idea of a physical rest, this holiday-making of the day, have anything to do with the Sabbath from a Christian standpoint? Should the failure of the ancient Hebrews to discern the deep spiritual intent of the Sabbath, be repeated by Christians? Should their limited view of the institution be adopted as the divine meaning of the institution, or of the commandment enjoining its observance? That remarkable people, the "Seventh-day Adventists," whose headquarters are at Battle Creek, Michigan,

insist that it should not. Let us briefly consider the ground of their contention herein, with the reservation that the writer speaks without express authority from them, and only from his understanding of their position as gleaned from books and conversations with certain of their members.

There was indeed some excuse for the "holiday" manner of "remembering" the Sabbath by the Hebrews in Palestine. Having been kept so long in the hard and cruel bondage, in "the iron furnace," of Egyptian slavery; and not having been allowed to keep the Sabbath when required to do so by the positive direction of the Lord (Ex. 5 : 4–19); it is not strange that, in their ignorance of spiritual things, their sudden deliverance into complete independence and bodily ease should overshadow the spiritual deliverance, the deliverance from the slavery of sin, which their temporal deliverance was to prepare them the better to appreciate, and of which the Sabbath was to be to them the sign.

But with Christians the case is widely different. Living in the light of all the Scriptures, and of the life of Jesus Christ himself, "God with us," and "Lord of the Sabbath;" knowing through him both Creator and Saviour, the deliverance from the bondage of sin (Rom. 7 : 14–25); knowing in him the power of God to create man anew (Eph. 2 : 10); knowing in him that blessed spiritual rest from the fruitless toil of our own works (Matt. 11 : 28–30; Heb. 4 : 4, 5, 10), — knowing all this, and living in the light of the Christian age, Christians are to remember the Sabbath day, say the Seventh-day Adventists, in the full and deep spiritual significance of the divine precept which the Hebrew mind so largely failed to discern.

"Remember the rest day," say the Adventists, "to distinguish, or set it apart" — for what? For idleness? for physical rest? Would this in any wise answer to the only reasons that have any significance for us? Shall we presume

to liken our physical inactivity to that mysterious rest of Deity, which he enjoyed at the completion of creation, which he gives to the weary, enslaved soul, and which alone the day is designed to recall to our minds? For Christians, say these Adventists, the command is to "remember the rest day," not on that day alone, but all the week, that they may not so weary their bodies as to be unprepared, when it comes, to set it apart, and distinguish it to the utmost of their energies in good works, and in bringing their spirits into the closest possible communion with the Great Spirit of the universe, concerning whose operations in the material world the most wonderful thing of all revealed to us is the rest of the first Sabbath day. It is quite as much a profanation of the Christian Sabbath, the Adventists maintain, to spend it in physical idleness, or rest, or to utilize it as a holiday, as it is to spend it in the pursuit of our ordinary avocations; for, though no man can by searching find out God, and it is not given us to know fully in this world what true significance may attach to the statement that the Creator "rested,"—though we may not understand fully just what his rest was, we may clearly enough appreciate, they say, that there is one thing it could *not* have been, namely, a *physical* rest, or a rest in any sense in which the word can be applied to human beings. For, they argue, as "God is Spirit," the only rest which he could have is spiritual rest. And as it is *his* rest, and *not our own*, which we are to remember and to celebrate, it follows that true Sabbath rest is spiritual rest alone.

This certainly seems unanswerable. But at the very foundation of the union of Church and State lies a gross anthropomorphism which regards Deity as a mere magnified monarch of the human type. And in nothing is this repulsive and blasphemous conception more strongly manifested than in the union of the Brownist Church with the State, which is embodied in Sunday laws. In the very "Sabbath-

schools" of the Brownist faith, the little children are, more or less deliberately — the degree of deliberation is immaterial so far as the result is concerned — taught to think of the almighty Creator of the universe as an overtaxed laborer who "took a day off" after he had called our time and matter into being, out of nothingness! But this, though pure Brownism, as embodied in our Sunday laws, is surely not Christianity. Is it not Christian doctrine, as held by the Seventh-day Adventists and formulated by St. Augustine: "It cannot be that God was spent with his work and needed rest like a man"?

The great apostle to the Gentiles was at infinite pains to develop and impress the essential spirituality of the Master's religion, its entire independence of all forms and ceremonies and external observances whatsoever; and to elucidate the spiritual significance for Christians, of many things contained in the Old Testament books. And upon nothing did he more strenuously dwell in this connection than upon the spiritual nature of the Christian Sabbath. See Heb. 4: 1–11. And our Brownist Christians understand perfectly that the Christian idea of a Sabbath has no connection with physical rest. They show by their actions that they correctly apprehend the spiritual nature of the occasion. They do not rest themselves. They do not allow their children to rest. Many of them will not employ servants who insist on utilizing the Brownist Sabbath for purposes of rest.

On the contrary, the day with the conscientious Brownist is a day of particularly exhausting and strenuous exertion. His ideal way of distinguishing his Sabbath is to spend it in the duties of devotion and in meditation on religious subjects. Now, no one will deny that the duties of devotion are as far from rest, if properly pursued, as any occupation well could be. The act of worship, as it is the highest, so it is one of the most exacting acts within the range of human exertion. It strains the faculties, monopolizes the attention,

absorbs the energies, taxes the powers to the utmost. Nor is the draught on one's capacities much less when the entire mind is concentrated, with or without an open Bible, upon the vast and awful mysteries of revealed truth. Among the Brownist laymen, then, the Hebrew idea of distinguishing the Sabbath merely by indulgence in physical rest is distinctly repudiated. And, indeed, Christian clergymen of every denomination give the lie to the pretense hereafter considered that the Christian Sabbath is a holiday or rest day, distinguishing it, as they do, from other days merely by working much harder than at other times, and, for the most part, so exhausting themselves as to be obliged to set apart a holiday, or keep a Sabbath in the Hebrew sense, on Mondays.

We find, then, a second serious objection to the Brownist Sunday laws in the fallacy — the blasphemous fallacy — which underlies them, that the Creator's rest was physical and that this is "remembered" by physical idleness on the part of his creatures.

CHAPTER III.

The Objection to Sunday Laws that they Require for their Defense Intellectual Dishonesty in their Clerical and Lay Advocates.

So much, then, has been written with the view of discrediting Sunday laws by reference to their source. It has been shown that they represented in Europe a union of Church and State, and that they represent in America the same. It has further been shown that in England and in America the authors of such laws, as we know them (that is to say, with their combined prohibition of work and play), were a detestable sect, hypocritically pretending to a peculiar moral excellence, in reality destitute alike of common humanity and common honesty. It remains briefly to examine Sunday laws on their merits, without reference to their origin, and to consider their right to exist among the enactments of an American commonwealth.

We have seen that the Brownist, having abandoned the written word and gone to tradition for his idle Sunday, returns to the written word only to distort and falsify it. Having violated his own principles in the adoption of the traditional feast of Sunday, the Brownist, like all proselytes, more zealous than those born in the faith, proceeds to attach to the one tradition which he accepts, a degree of importance far in excess of that attached to it by others. He takes, so to speak, all the reverence and respect which other Christians distribute among a number of anniversaries, and concentrates the whole on this one day.

And for the "observance" of this day and the "observance" of it in the peculiar and unique manner of his own

devising, he contends as he contends for no other portion of human conduct. And this is inevitable.

For it is just because this conception of the idle and cheerless Sunday *was* all their own, because it marked them off from all other Christians, and even from other Puritans, and was their great distinctive tenet, that it seemed so vital and important to the Brownists. This is the way with all sects, and is the great bane of sectarianism. In almost all cases, the points of difference are among the non-essentials of the upright life which it is the real business of religions to induce people to lead. But strength is wasted over these non-essentials till little is left for the battle against the real wickedness of the world; and eyes are strained in the scrutiny of these minute points till the sense of proportion is lost, and small things cannot be distinguished from large things in the conduct of men.

This has been emphatically the case with the Brownists with their idle and cheerless Sunday. There is scarcely one of their kind by whom the idea of "purchasing indulgence" for the rest of the week with extraordinary self-denial on the first day, is not more or less consciously entertained. The essential immorality of this idea is as plain as the strong appeal it makes to one of the greatest weaknesses of human nature. Children, and grown people as well, find it much easier to go to church twice on Sunday and lounge away the rest of the day, than to be kind and gentle, honest and truthful all the other days of the week. And when church-going and lounging on Sunday are elevated to the rank of cardinal virtues, and the Sunday church-goer and lounger is considered as justified in giving himself airs in the presence of one who is neither of these things, but was cheated in a trade on Saturday night by the Sunday church-goer and lounger, then it is natural that men will practice the easier virtue to the neglect of the more difficult one, and fondly imagine that thus they are keeping balanced their "accounts in the eternal

books." But none the less is it immoral because it is natural; and none the less is the spirit of Brownism in this regard exerting an immoral influence over its disciples, and warping the judgment of its preachers, making of them blind leaders of the blind, disqualifying them to appreciate and to teach the relative importance of things in the world of morals.

While making of idleness and cheerlessness on Sunday, positive Christian virtues of the very highest importance, the Brownists have disseminated the impression that the idle and cheerless Sunday *by law established*, is an "institution" so essential to be preserved that it must be defended at all costs. And, as it cannot be defended logically without intellectual dishonesty, they have compelled their logicians to become intellectually dishonest in its defense.

Intellectual dishonesty is manifested in various ways,—by making statements wholly false, as by a false presentation of facts, or by suppression of relevant facts; but above all, by the use of arguments whose soundness the debater has perhaps never considered, and to which, if sound, he himself attaches no consequence whatever; in other words, the adoption of a certain line of reasoning because the user imagines that it will influence another, when the user himself is not in the least influenced by it, and would hold the same opinion if the reasoning were altogether in the wrong direction. Though the general opinion may be otherwise, this last form of intellectual dishonesty seems to constitute the crime in the first degree, and to be more degrading and disgraceful than a mere false or perverted statement of facts. It is the game of the "confidence man" which repels us more than that of the burglar.

But, however we may grade this crime of intellectual dishonesty, the exigencies of Brownism require that it shall be committed in every degree by the defenders of the faith. In the "Union Bible Dictionary," published by the American Sunday-school Union, under the caption "Lord's Day," there is

a reference to Rev. 1 : 10. Here the falsehood is only insinuated, — that the "Lord's day" mentioned in that text is Sunday. But under the word "Feasts," falsehoods are explicitly stated as follows: The Sabbath by the Jewish law was observed on the seventh day of the week or on Saturday; but "*Christ changed it to the first day of the week*, which is our Sabbath day, *or Lord's Day, as it is frequently called in the New Testament, that it might become a memorial of his resurrection from the dead.*"

Now two of these three deliberate falsehoods are, of course, apparent to any reader of the New Testament, Greek scholar or otherwise. Because any one who knows how to read and does read the English version of the New Testament, knows perfectly well that the time of the Sabbath was not changed by Christ to the first day of the week nor to any other day whatever; nor was the *significance* of the Sabbath as a memorial of the Creator's rest ever altered by Christ in order that it might "become a memorial of *his resurrection*," or of any other event whatsoever. These two falsehoods — that the time and symbolism of the Sabbath were changed by Christ — are so patent and puerile that, *historically speaking*, they can do no particular harm to any but the infant classes in the Sunday-schools. The insinuated falsehood first mentioned — that the "Lord's Day" alluded to in Rev. 1 : 10, is Sunday, must have been perfectly well known to be a falsehood by whoever wrote and edited this work, assuming that writers and editors were as fit intellectually, as they were obviously unfit morally, to have anything to do with the bringing forth of a "Bible Dictionary."

But this insinuated falsehood is still "palmed off" on those who are presumed not to know Greek, by such apostles of New England Brownism as compiled the "Union Bible Dictionary." And a bubble so persistently blown may as well be pricked here, once for all. The Greek word κῦρος

(*kuros*) means "supreme authority," and as connected with this idea, "fixedness," "determination," "certainty." From κῦρος, we get κύριος (*kurios*), originally an adjective, signifying both "supreme" and "fixed," "determined," "stated." Thus, at Athens the κυρία ἐκκλησία (*kuria ecclesia*), or regular, stated assembly, was distinguished from an assembly specially summoned. And the adjective is applied to days by Herodotus and others to signify "fixed," "appointed," "arranged." By a process familar enough in Greek, this adjective, derived from a noun, came in time to be used as a noun itself, in the sense of "supreme." And so, again, in due course, this noun gave birth to an adjective of its own, κυριακός (*kuriakos*) signifying "lordly," or "worthy of a lord;" i. e., "distinguished," "great," "glorious," "magnificent;" perhaps at first merely "decreed," "fixed," "appointed," in which last sense it is quite likely that the adjective would be used in connection with the equivalent of our "day," on account of the similar use of κύριος.

Now, in all the Scriptures, and in all of God's dealings, with mankind, there is known but one day that can possibly meet the requirements of the Greek word used in Rev. 1 : 10. It is the seventh day, the Sabbath of the Lord; and this does meet every requirement of the Greek word here employed. That day is declared to be the sign of "supreme authority" — the sign of the true and only living God, the Creator of all things. Eze. 20 : 20; Ex. 31 : 17. It is a "fixed," "stated," "determined," "appointed," "regularly recurring" day to be remembered and observed to the Lord. It also conveys in itself the idea of "worthy of the Lord," for he not only plainly calls it "My holy day" (Isa. 58 : 13), but its very origin lies in that ineffable procedure of the Lord himself in his "cessation," "resting," "refreshing" from the creative activity, and in "blessing," "hallowing," and "distinguishing" — sanctifying — the day, which made it the Sabbath day. Gen. 2 : 1–3. This day which Jehovah himself so

honored, which he "distinguished" and made so "great" and "glorious" by attaching to it his own divine character — this is the day which is indeed "Lord-like," "worthy of the Lord." It is impossible to conceive of any other Greek term which would have so fully expressed the divine meaning of the Sabbath of the Lord. And nothing can be more certain outside of mathematics than that the phrase in question could not have been understood as designating Sunday by the early readers of the Apocalypse.[1]

It has been said that such deliberate falsehoods as that Christ altered either the time or the symbolism of the Sabbath, do no harm *historically*, outside the infant classes in the Brownist Sunday-schools; so, historically speaking, no scholar is the worse for being told the deliberate falsehood that Sunday is referred to as "the day of the Lord" in Revelation. But the moral injury done by printing deliberate falsehoods in a "Union Bible Dictionary" is incalculable. Let us remember that the book concerning which these deliberate falsehoods are told is the Bible. Let us remember that the One who is thus belied is the Master. Let us remember that the book in which these deliberate falsehoods are printed pretends to be a help to the young in the understanding of the history and nature of the Christian religion; and is published and circulated by a society ostensibly engaged in the work of "evangelizing" the world, — for, remembering these things, we shall be prepared to estimate justly the sacrifice of moral sense and self-respect which Brownism requires in those who undertake the defense of its dogma of the idle and cheerless Sunday. After a while the children in whose hands the "Union Bible Dictionary" of the Brownists is put, come to think for themselves, and to understand the true character of these statements; and what must be in their esteem the character of the Brownists who

1 It is worth noting that this is the only instance we have in the New Testament of the use of the adjective form κυριακός as applied to a day.

manage the "American Sunday-school Union" when they apply to these the principle "*Falsus in uno, falsus in omnibus*"?

The last mentioned form of intellectual dishonesty, that of using arguments which have no weight with the user,—in other words, of pretending to favor a thing for certain reasons when we really favor it for other reasons exclusively,—is thrust upon our attention very frequently of late in the discussion of the Sunday-law question. The Brownists desire to maintain the idle and cheerless Sunday by law established, because it is a peculiar and distinctive dogma of their sect, and its establishment by law, constitutes *pro tanto* a union of the Brownist Church with the State. But the fact that such a union is represented in an idle and cheerless Sunday by law established, is surely, however slowly, becoming apparent to the American people.

The Brownists understand this perfectly well. Hence, to save their "institution" of the idle and cheerless Sunday, they are of late protesting with exceeding earnestness that it is, in reality, no institution of theirs at all. A union of Church and State, indeed! Nothing could be farther from their thoughts. It would be "un-American," and the Brownists would sooner perish than countenance or advocate anything un-American. All they want, they assure us, is the "secular Sabbath." It is "sanitary considerations" alone that move them. It is the poor, struggling, over-worked laboring man with whose interests they are concerned. Their motives are of the earth, earthy; and in their zeal for the maintenance of the idle and cheerless Sunday by law established, there is no taint of religious impulse. It is merely an accident, you see, that the "secular Sabbath" they are trying to keep in the law happens to be Sunday; it is merely a "factitious advantage," as a certain United States judge observed, that is enjoyed by those whose sacred day is selected by the State for "recognition" over those whose sacred days

are unnoticed by the civil authority. There is no "preference" of one sort of belief over another in this distinction, they plead. The day is to be "preserved" for the sake of the race, which would perish from off the earth through overwork if we were to do away with the idle and cheerless Sunday by law established.

In judicial construction this "secular view" is embodied in the expression, "the courts must view Sunday as a holiday and not as a holy-day." The utter inconsistency of this view with the history and contents of Sunday laws is shown elsewhere. What we are here concerned with is the detestible hypocrisy, the gross immorality, of the Brownists who urge it.

For these are intelligent and educated men. They are, indeed, the most acute and discerning in the ranks of Brownists. As such, they have been the first to realize that the old theological defense of the idle and cheerless Sunday is no longer available, that the spirit of inquiry and investigation which is so characteristic of our age is exerting itself on this subject as on all others, and is unmasking the Established Church of Brownism which lurks behind that "institution," — in a word, that the ground must be shifted, and a new position taken, if the battle is not to be lost forever. We are therefore obliged to compliment the acuteness and discernment of these men, at the expense of their moral courage and their sincerity. For no intelligent man can urge without the consciousness of intellectual dishonesty, the argument that Sunday laws are either passed or enforced for the physical benefit of "the poor laboring man" or anybody else.

No real supporter of these laws can persuade himself, even by trying to persuade others, that either he or his fellow-Brownists of the past or present time care in the least for the physical benefits which may or may not result from the enforcement of the idle and cheerless Sunday. All Brownists know perfectly well that their idle and cheerless

Sunday was originally established in England as a theological institution and without any reference whatever to physical considerations; that wherever it is established in the United States, the motive of its establishment is a religious motive, the stimulus of its enforcement is a religious stimulus, and no regard for social and sanitary results inspires its advocates. They know that if it were demonstrated that their idle and cheerless Sunday is a positive injury to the bodies of men, and a disorganizing social influence, their zeal for "the day" would not in the least abate, and that they would simply regard whatever inconvenience it might entail on the individual or the body politic, as "a suffering for righteousness' sake."

Knowing all this, are they not clearly guilty of a high and execrable degree of intellectual dishonesty when they pretend that the object of Sunday laws is the physical betterment of the race, and that they are supporters of these laws for any such reason? Cato wondered how one auger could look another in the face without laughing. It is difficult to understand how any intelligent Brownist can use this secular argument for the idle and cheerless Sunday without blushing at his own insincerity. But whether the red signal flag of the blush is flown or not, the corruption exists within. The man is false to himself. He has prostituted his intelligence. He has sold his soul. He has done evil that good may come. He has undertaken to obtain under false pretenses the "goods" of idleness and cheerlessness on the first day of the week. And a soul that has once been bartered is ever thereafter in the market. A clergyman who is compelled in the defense of a dogma or tenet of his sect to be intellectually dishonest, ought to resign; for nowhere does *falsus in uno, falsus in omnibus* apply more absolutely than to such a case. If he once plays fast and loose with his own spirit, at the dictation of tradition or convention, he will do it again at the command of interest or desire. The consciousness of

his own degradation will never leave him; no second baseness will lower him any further in his own esteem. He has lost his bearings on the ocean of morals. How is he safely to steer any longer, either for himself or others?

The untiring zeal and determination with which the Brownists have defended and propagated this distinctive tenet of theirs have been rewarded. Their intellectual children are everywhere. Sects differing on almost every other point connected with popular Christianity, vie with each other in their insistence upon this one. On no subject of fanaticism are the victims more wild, unreasoning, and bitter. The intellectual dishonesty which Brownism demands of its followers in this regard is by no means confined to the pulpit. Men of other callings who are ordinarily above the suspicion of insincerity, and who prove themselves capable of weighing other public questions with discrimination and judgment, will gravely affirm that it would be impossible to maintain the social order if we should dispense with the idle and cheerless Sunday. They will prate of the "secular Sabbath," "the overworked laboring man," "police regulations," etc., etc., being all the while perfectly aware that they are guilty of false pretenses, and are throwing a mask on this dogma of Brownism and seeking to keep it in the statute-book by imposition, and by making it appear to others that it is a certain thing and has a certain purpose, when they know that it is no such thing and has no such purpose; and that, if it were any such thing or had any such purpose, they would not care in the least either for the passage or the enforcement of a Sunday law.

But now that we have spoken thus severely, yet truthfully, of intellectual dishonesty, let us add that it is with no idea of imputing this quality in any particular case. Self-deception is quite as common as the deception of other people. It is common among the wise as well as among the silly. Many a man sincerely believes that he holds to an idea

or supports a cause for the reasons he gives you, when in reality he is influenced by others totally different, or perhaps by no reason at all, but only by heredity, environment, self-interest, etc. The question whether intellectual dishonesty is consciously, deliberately, willfully practiced in any particular case, like all other questions of moral responsibility, must be left to that great Judge "unto whom all hearts are open, all desires known, and from whom no secrets are hid."

And there are not wanting here "extenuating circumstances" in the cases of both clergy and laity. The tendency of the religious system of any country, as is well-known, is to identify itself with existing institutions and customs. The Church, be it pagan, Mahometan, popular Christian, or what not, is instinctively a conservative force. It dislikes change, and seems to scent some danger to itself in every "new-fangled notion" that comes to the front. Its preachers are of the atmosphere in which they live. Summoned to defend "the thing as it is," they deem it part of their duty to defend everything as it is. This conservative work is one of the grand functions of popular religion in the world. There are those who derive the word "religion" from two Latin words, so as to make it mean that which "holds back," or "restrains," men. Whether the etymology be correct or not, it is an indisputable truth that just as religious scruples prevent an individual from yielding to temptation, so the influence of the perverted religious sentiment in all ages has been to restrain the community from sudden and violent alteration of its ways in general and in particular.

But, as with reference to the individual, so with reference to the community, we must bear in mind that religion is not everything. Mr. Matthew Arnold rightly says that the main concern of religion is conduct, and he added that conduct, is "three fourths of human life." Afterward he admitted that the proportion was perhaps too largely stated. Be that

as it may, we know that the religious sentiment or impulse is often strangely perverted to the detriment of individual character. This mainly happens from its exaggeration, and its misapplication to matters with which it has no real and proper concern, Great injury is also done to communities by like means. Thus, it is good to criticise, analyze, view from every side and in every part any proposed change in the State's manner of living, its laws and institutions; and so far as the conservative force of the Church in its broadest sense is exerted to compel this criticism and analysis, its work is invaluable, and its mission a grand one.

But, on the other hand, this criticism and analysis of any proposed change is not merely our right, but it is our duty. Change is necessary to progress; and when any change is proposed, we wrong ourselves if we do not examine its merits carefully and fairly, and with the determination to accept or reject it according as it may finally appear to us to represent progress in a right or a wrong direction. The religious sentiment or impulse, then, is exaggerated to the detriment of the community, when, as is too often the case, it seeks to brand change as wrong in itself, and to block in advance the discussion of any particular change proposed, and the examination of it upon its merits. An excellent illustration of this exaggerated working of the religious sentiment as a conservative force is found in the use of that pet phrase of the Brownist clergy, "an American Sunday,"—as though a thing were necessarily good because it is "American" or necessarily bad because it is European. They aim, by the use of that phrase, to *excite the people's emotion* in advance, upon the subject, and thus to prevent them from approaching it in a calm and judicial frame of mind; they would misuse the patriotic impulse to stifle the working of clear thought, and to brand a proposed change as undesirable for the utterly irrelevant reason that it is "foreign," and thus to block its consideration and discussion upon its merits.

Again: besides the exaggeration of the religious sentiment or impulse in seeking to prevent us from comparing the European Sunday with our own upon the merits, there is either a misapplication of that sentiment or impulse to a matter with which it has no proper concern, or else the union of Church and State embodied in the Sunday laws must be conceded. Failing to block the comparison of the American Sunday with the European Sunday upon the merits, the religious sentiment or impulse is invoked to affect that comparison and to bias the minds of the people in making it. If the making of it is a matter with which religious sentiment has any proper concern, then it is a religious matter. And as it is a fact beyond all honest dispute that religious sentiment is the sole concern in this whole matter, it follows that our Sunday laws are religious laws only, and therefore they embody the union of Church and State.

CHAPTER IV.

The Objection to Sunday Laws that they Require for their Enactment Intellectual Dishonesty, and a Non-legislative Frame of Mind in Legislators.

BECAUSE the Brownists have tainted so many different religious denominations with this Sunday dogma of theirs, they have spread the vice of intellectual dishonesty through our legislative halls, and made our judges the victims of its demoralizing influence.

Let us take the case of the legislator first, and assume that a Brownist lobby is striving to induce him to vote for a Sunday law. Here are two influences at work, or rather the same influence is here at work in two directions. And it works in both directions in two ways. The first direction in which it works is this: It leads or drives the legislator toward the prejudice that there is, somewhere or other, a divine command that men shall be idle on Sunday. And it leads or drives him in this direction in two ways, through the Brownist *Zeitgeist* of the past and of the present. Through the Brownist *Zeitgeist* of the past; because from this it has resulted that the legislator, by heredity and by education, is disposed to believe that there is such a divine command as here mentioned. And this is the way in which it works from within. Through the Brownist *Zeitgeist* of the present; because he finds a very respectable number of presumed "experts" strengthening his inward impression that such a command does exist. And this is the way in which it works from without. And so the Brownist *Zeitgeist* of the past and of

the present, working from within by predisposition, and from without by the urgings of its representatives, by human agency leads or drives the legislator toward another prejudice, namely, that there is an intimate and necessary connection between the enforcement of this divine command — or in other words, the existence of a Brownist Sunday law — and the common weal.

Between these two prejudices there is an intimate, though subtle connection, born of the spirit of Brownism. The idea that the divine command needs to be enforced by human agency, and that WE are the persons charged with the mission of enforcing it, is the very essence of Brownist religion. The intellectual children of the Massachusetts Brownists adhere still to what has been truthfully given as "the first Plymouth platform:" —

Resolved, first, That the just shall inherit the earth; *Resolved, second,* That we are the just.

But we will consider these two prejudices separately. Does the prejudice that there is somewhere a command of Deity that men shall be idle on Sunday, place a legislator in a non-legislative frame of mind toward a Sunday law? This result does follow, though illogically. It has been well observed that the power to work miracles would not in any wise whatever imply either the ability or disposition to tell the truth; and yet that if any man habitually worked in the presence of others what these last esteemed to be miracles, they would believe almost anything that the supposed miracle-worker might choose to tell them. So, while there is really no connection between the existence of a divine command for Sunday idleness, and the obligation of a legislator to vote for a law enforcing such idleness on other people, it is undoubtedly true that, once a legislator is convinced that this command exists, he is strongly swayed, hereditarily and by environment, toward the conviction that it is *his* duty to vote for such a law. And it is also plain

enough that this is a non-legislative frame of mind and that it implies the union of Church and State.

The legislator who is induced to vote for a statute by the idea that it embodies a command of Deity, drops his character as a legislator altogether and undertakes to act as the enforcer of the will of the Deity upon other people. This is no part whatever of his duty as a legislator, which is to legislate for the good of the people within constitutional limitations. And, however strongly he may be convinced that there is a divine command for Sunday idleness, and that it would be for the good of the people to have that command embodied in a statute, yet he breaks his oath as a legislator, and is in reality no legislator, but a religious propagandist, when he undertakes by his vote to do the people that good by violating the restraints laid upon his conduct as a legislator by the Constitution. It is to this that he has sworn allegiance as a legislator, to this alone that he owes his existence as such, and to this alone may he rightly turn for the definition and limitation of his duties. And any statute whose provisions by their very nature cause the mind of the legislator, when pondering his vote upon it, to go outside of the Constitution altogether, and to determine his course by his conclusions on the question of whether the statute does or does not embody a command of Deity, — any such statute causes the legislator to break his oath of office. And when it becomes a law by means of legislative votes cast in its favor because of its supposed embodiment of a command of Deity, it sets up the union of Church and State and gives *pro tanto* a preference to one religion over another.

Let us look at this matter a little closer. Some men decline to admit a Deity; others deny that his will is anywhere recorded; some insist that it is recorded in one place and some recognize it in another. "Let every man be fully persuaded in his own mind." For the man himself, of course, when he has found it, the expression of the will of Deity is

enough ; he recognizes his obligation to obey, and he thinks other men ought to obey also. But here we must discriminate between the legislator and the man. Admit that the man is right, and that he has found an expression of the will of Deity ; admit, further, that the men who compose the membership of the legislature ought to obey that will. What is that will, as expressed in the case in hand? "Remember the Sabbath day, to keep it holy." Every man in the legislature, and every man outside of it, ought to obey this command of Deity. If the way to obey it is to be idle on Sunday, then legislators and all others ought to be idle on Sunday. But, observe that there is no distinction whatever in this regard between legislators and others. Both obey or disobey the command of Deity in the same manner precisely. And why? *Because this command of Deity, like all other such commands, is addressed to the individual,* AS AN INDIVIDUAL, *without any regard whatever to his official character.*

Honesty, purity, fidelity, are demanded by the will of Deity in all men alike and in the same degree, without reference to social or political distinctions. But if no more is demanded of one man than another by that will, it follows that when a man through the human agency of voting becomes a member of the legislature, while he takes upon himself an entirely new set of obligations and duties with reference to the community, from which a non-member is free, yet his duty to Deity remains just what it was before. The *man* is the creature of Deity ; he must obey the will of Deity. The *member* is the creature of the State ; her will is his law. Thus, before a man becomes a member of the legislature, he is under obligation to obey the will of Deity and "remember the Sabbath day to keep it holy ;" but after he becomes a member of the legislature, he is under no additional obligation whatever in this regard. And, as the legislator does not assume any new duty toward Deity, as he undertakes no new functions in the domain of religion by reason of his of-

ficial duties, so he thence acquires no new rights or privileges in that domain. If he had not, as a private citizen, the right to enforce in others obedience to what he considered a divine command, then *he does not get that right by virtue of his election.*

The special right he thus acquires is of civil creation and of a civil nature altogether, and therefore to be exercised for civil purposes alone. It is the right to force on others to the extent of his vote, obedience to his notions of the dictates of worldly wisdom, for the sake of worldly welfare alone, and even this only within the limits of constitutional restrictions. And, as the legislator, as such, has no religious duties or privileges, of course there are no commands addressed to him *as such*, in the Book of Christian religion. To take the case now under consideration: It is nowhere commanded, "Thou shalt vote for a law to compel other people to keep holy the Sabbath day." Upon this point the legislator is as free regarding his action from any command of Deity, as he is regarding his action on a tax bill. Of course he is commanded by Deity to discharge his duties as a legislator conscientiously, as he is to discharge all other duties; but the will of Deity is nowhere expressed as to what his duties as a legislator are. Their definition and limitation are a matter of human constitutional law entirely.

The will of Deity as to specific legislation has never been publicly revealed but once, and that was under the "pure theocracy" of the Jews. And even under that system, the legislation was not directed to be enacted by human agency, but both the law and its penalties were specifically revealed. It is as arrogant — shall we not say it is as blasphemous? — in a modern legislature to claim divine sanction for one of its enactments as it would be for a railroad company to assert the same inspiration in the selection of a particular route by its board.

Well, then, may we not say that a conscientious legisla-

tor, pondering his vote on a proposed Sunday law, with mind undarkened by the clouds of Brownism, and sincerely desiring to fulfill the will of Deity, would in his official action commune with himself somewhat after this fashion? "It is the will of Deity that I shall herein discharge faithfully the duty I owe to the State, which the State has defined for me, and which I have expressly pledged myself to perform. I am not at liberty to judge for myself what that duty is, unless in cases where my employer, the State, has failed to define it for me. Is this such a case? I cannot shut my eyes to the fact that this question of a Sunday law is a religious question. The character of its advocates, the fact that they consist exclusively of professional religionists, male and female, sufficiently demonstrates that; the nature of the arguments these people use in favor of the law, simply confirms what is already clear from their pressure and their zeal. Now, the State has defined my duties, which it is the will of Deity that I should perform, in the constitution. Let me look at that, and see what my duty is, as to legislating upon religious questions. The constitution says, 'No preference shall be given by law to any religion.' This means that my duty as a legislator is to vote against the passage of any law which gives a preference to any religion.

"Now, let me turn from the examination of the constitution, and examine myself for a moment. I know that these professional religionists are here urging the passage of this law for the reason, and for the reason *alone*, that they believe it will give a preference to the particular religion which they profess over all other religions. Do I not also know perfectly well, in my own mind, that this belief of theirs is entirely correct? Am I not conscious that my inclination to vote for this law is based purely on my knowledge that it *will* give a preference to their religion, and my desire thus to oblige a number of good citizens? But stop, there is another basis for this inclination of mine.

Away down in the depths of my heart, there is a strong hereditary sympathy with the kind of religion these people profess. I may not live up to it — as many of them probably do not — in respect to Sunday observance and in several other respects, but I have still a 'preference' for it. As part of this religion, I have been taught to believe that there is a command of Deity that men shall not work on Sunday, and I should like to see all men obey the commands of Deity. Am I not, then, in great danger of allowing my own preference in the matter of religion to influence my vote on this bill? On the other hand, if I feel that it is this preference of others which alone inclines me to vote for the bill, then is it not evident that, to my own inner consciousness, the bill does embody a preference of one religion over another? But, if it embodies such a preference, it violates that Constitution which I have sworn to support. It is the will of Deity that I shall not break that oath. Now, will it matter in the least in His eyes whether, in the breaking of it, I vote to give a preference by law to the particular religion which I happen to profess, or to some religion professed by other people?"

The correctness of this line of thought cannot be impeached. It discriminates with right morality between the duty of the *individual*, which is to give a preference to the religion that he believes to embody the will of Deity, and the duty of a *legislator*, which is to vote against any law that gives a preference to his own religion or any other, as against all laws that violate the constitution under which alone he acts as a legislator. It distinguishes justly and properly between the man and the member. It is the reasoning of intellectual honesty, as opposed to the guidance of intellectual dishonesty, consciously or unconsciously inducing the legislator to regulate his official conduct by another standard than that to which he has sworn that he will conform.

CHAPTER V.

The Objection to Sunday Laws that to Sustain them Requires Intellectual Dishonesty and a Non-judicial Frame of Mind in the Judges.

We have seen that the Brownist influence places our legislators in a non-legislative state of mind when it seeks to have them pass a Sunday law. No less baneful is its effect upon our judges when it seeks to have them sustain and apply such a law. In dealing with the question of their sustainment and in dealing with the question of their construction and application, a judge dominated by the Brownist influence is in a non-judicial frame of mind.

And first of the question of sustainment. The judicial frame of mind requires that a judge in ruling on the constitutionality of a statute shall be governed by the constitution alone, without the slightest reference to the wishes of the people as expressed otherwise than through that instrument. The people may change the instrument as their will may change; the judge must follow the will as therein laid down. But judges are human, and, like other men, are under the influence of the *Zeitgeist*, or what appears to them to be such. And the Brownist religious sentiment has been so strenuously busying itself with this question ever since it obtained a foothold here that the *Zeitgeist* in America has seemed to set against any fair discussion whatever of Sunday laws.

Many persons desire the maintenance of these laws at any cost in the way of suppression or perversion of their fair consideration. And, while the balloting on such questions as Sunday street-cars, etc., has more than once indicated that

in an American community of any considerable size, the "Sunday-law-at-any-price" men (whatever may be the case with the women) are a minority of the total population, they are a very large majority of the "fussy," aggressive, meddlesome folk; they make a noise in the world out of all proportion to their real numbers and importance; and so they are too often mistaken for real representatives of the *Zeitgeist*.

It is also true that among the supporters of Sunday laws are included many of their systematic violaters, who are quite sincerely persuaded that they are necessary for other people. But, while it is true that the noise made by the Brownist Sunday-law advocates is out of all proportion to their numbers and importance (it is an old story, "The shallows murmur while the deeps are dumb"), nevertheless, as was said, this noise has its effect, and part of its effect on the minds of our judges is to produce the impression that an overwhelming majority of the people want the Sunday law sustained at any price. And our judges, being human, are thus biased in advance on this question, and caused to *hunt up* reasons whereby the Sunday law may be sustained, instead of examining its position under the constitution without any bias toward one conclusion rather than another. They are acting by their light as servants of the people, trying to do their will. But they forget that for them the will of the people is not to be gotten from Brownist pulpits nor Brownist newspapers, but from the constitution alone. And they are, therefore, in a non-judicial frame of mind.

Another effect of Brownism on judges as well as legislators is, by associating the Sunday law with a supposed special command of Deity, to throw around it a peculiar halo of sanctity, which prevents its calm and critical examination, like other statutes, upon its merits as a statute exclusively. It is like that old subject of secession which senators and representatives for so many years tacitly agreed should not be mentioned in the halls of Congress, though they "talked all

around it," and the people and papers outside openly debated it in every aspect. There is about the idea of "our American Sunday" something of that "sacredness" that certain statesmen used to ascribe to "the Union." To impeach the eternal verity of the Sunday law or question its expediency is to "touch the Lord's anointed." It is evident that no judicial consideration of a statute is to be expected of a judge who approaches the subject in such a frame of mind as this.

The result of so approaching the consideration of a statute is fatally to blind the judge both with reference to the position and functions of the legislature, and with reference to his own position and functions. He comes to look upon the legislature as in some sort the mouth-piece of Deity, and, of course, this renders the expression of its will sacred, and inquiry into the authority of its deliverances rather in the nature of blasphemy or heresy. But this inquiry is one of the chief purposes of his official existence. For him the legislature has properly no connection with Deity. It is simply a part of a machine constructed by human agency for human purposes, and his business is to see to it that the part does not go beyond the purposes for which it was placed in the machine of government. And these purposes are defined and limited by the constitution.

When the question of the constitutionality of a statute is at issue, the judicial frame of mind requires that that question shall be settled by the constitution alone. It no more admits of any deference to a command of Deity, real or supposed, than it admits of deference to a change in the minds of the people, real or supposed, subsequent to the constitution's adoption. So that, if there be a command of Deity recorded anywhere outside of the constitution that a Sunday law with certain provisions shall be enacted, yet this will not render its enactment a legitimate exercise of legislative power, unless it be so under the constitution. And, conversely,

though there should be produced from some source an express command of Deity that no Sunday laws shall be enacted, yet this will not render its enactment an illegitimate exercise of legislative power, unless it be so under the constitution. So that the commands of Deity have nothing whatever to do with the question of the constitutionality of a statute, except so far as those commands may be embodied in the constitution. And when embodied therein, so far as the courts are concerned, they derive all their sanction and force from their embodiment, and no sanction or force whatever from the fact that they are commands of Deity.

Of course, there is a certain sense in which whatever is, is part of Deity's plan for the out-working of mysterious purposes beyond our ken. But when we come, as we must come, for all practical purposes, to discriminate between good and evil, and to say of the first that it is the will or command of Deity, and of the second that it is against such command, we see at once that the will of Deity, in this sense, regards moral questions exclusively. And it is evident that a constitution must deal with many questions which have nothing whatever to do with morals,[1] in other words, it must contain many provisions which are neither moral nor immoral, but are simply outside the domain of morals altogether.

For example, a constitution provides for the number of members who shall constitute a legislature, the manner of their election, etc. Here is a matter on which no man will pretend that there is a record of Deity's command. A constitution provides that there shall be no preference under the law of one religion over another. Here is a matter wherein many important persons consider that there is a flat defiance of Deity's command that everybody (including the State, as "a body corporate") shall give a preference to the

1 It will be shown hereafter that neither constitutions nor statutes have anything whatever to do with moral questions *as such*.

particular form of religion which they profess over all others. A constitution provides that Sunday shall be excepted in counting the number of days allowed the governor for considering bills. Many consider this as embodying the will of Deity that Sunday shall be kept as a holy day, and that no secular labor shall be performed. But though the first of these three things be not referred to in any recorded command of Deity, and the second be against such command, and the third the expression of his will or command, yet when presented for judicial cognizance, all three of them stand on precisely the same level, are of the same binding character, and are to be regarded in precisely the same way.

And as with constitutions, so with statutes. They, too, must deal with many matters untouched by any recorded commands of Deity. It might be, too, that they would allow or direct that things shall be done which are in the very teeth of the recorded commands of Deity. It might be that they would simply enjoin what is already commanded by Deity. But in neither case has their relation to the commands of Deity the slightest relevancy when the question is either as to their constitutionality or their construction.

The prejudice produced by the influence of Brownism that there is a special connection between a Sunday law and a divine command, blinds a judge as fatally to his own position and functions as it does to the position and functions of the legislature. He comes to look upon himself as in some sort the upholder, the expounder, and the enforcer of a divine command when this statute is before him, instead of regarding himself in his true light, as part of a machine constructed by human agency for human purposes alone, and like the governor of the steam engine, having for his special duty the seeing to it that the other parts operate in a regular and orderly manner according to the law of their being. He begins to feel that Deity, instead of the constitution, is the author of his official being,

to imagine that he has, as judge, a "mission" from "on high," instead of a mere commission from the governor or the people. And for him to falter in such a character, to look beyond this inspiration for guidance, seems like "kicking against the pricks."

And in his case, as in that of the legislator, all this implies a confusion of his personal and his official duty, and he ceases, in fact, to be a judge.

Suppose he is fully persuaded in his own mind that there is a divine command that men should not work on Sunday. It by no means follows that such a belief will justify him in sustaining the constitutionality of a law compelling everybody to be idle on Sunday. The old Hebrew judges decided the guilt or innocence of a party arraigned before them on the charge of violating the fourth commandment, without any reference to its validity, because, like all the rest of the law which they administered, it came from a source unquestioned and unquestionable. That it was a command of Deity which it was their duty to enforce, was a point not to be mooted. It is otherwise with an American judge. He has no *commandments* to enforce. He deals with *statutes*. The statutes with which he deals do not begin, "Thus saith the Lord;" they begin with some such phrase as, "Be it enacted by the General Assembly," etc. And the very first question that he has to consider in dealing with a statute is, Had the General Assembly authority to enact it? And if he permits himself to decide this question with reference to any command of Deity, real or assumed, or with reference to anything whatsoever but the constitution which created the Assembly, and has defined and limited its sphere of action, then he is deciding a judicial question in a non-judicial frame of mind.

His judicial oath included, his position justifies, no such performance. His oath is to support the constitution. If he does not support everything in that constitution, and re-

fuse to support anything outside of it, in his judicial capacity, utterly irrespective of his personal views of what is or is not a command of Deity, then he breaks his judicial oath. If he finds that compliance with his oath forces him to violate a divine command, he may, of course, resign; but he cannot act judicially on the bench and break his oath. Even if there were an express command, "Thou shalt sustain the constitutionality of a Sunday law," no judge of ours could appeal to it as binding on his official action. To do so is at once to decide or judge purely religious questions — the question as to the verity of the command, the question to whom is it addressed, the question of the kind of Sunday law which might be referred to, etc., etc. And a judge who undertakes to decide such questions is setting up the union of Church and State at once; and when he sustains a statute as the result of his conclusions on these points, he is giving effect to a law that grants a preference to one religion over another.

And it may be added that to decide such questions is as impossible as it is illegitimate, for our judges. They have no means whatever of ascertaining what is the will of Deity, nor where it is recorded. They cannot decide for the Jew against the Mahometan that it is recorded in the Pentateuch — or Hexateuch, in modern parlance. They cannot decide for the Christian against the Jew that it is recorded in the New Testament as well as in the Old Testament of the King James version. They cannot decide for the Roman Catholic against the Lutheran that it may be found in the "Apocrypha" as well as in the Testaments recognized by Protestants. Nor, assuming that a certain mandate, couched in human language, could be ruled by the courts to be an expression of the will of Deity, would it be possible for them to authoritatively interpret that mandate when its meaning and application should be disputed; and it is hard to imagine a mandate couched in human language over which such a dispute might not arise.

It will not do, then, for an American judge, any more than an American legislator, to imagine that in his official character he is "an instrument in the hands of Providence." It will not do for him to be influenced in his official action by his private notions of what men ought or ought not to do. He may think it is the will of Deity that men shall not work on Sunday; but this is not the slightest reason why he should sustain the constitutionality of a Sunday law. He may think it is the will of Deity that no interest should be taken for the use of money; yet he dare not refuse to give judgment for its recovery in any amount provided for by the law. It is surely the will of Deity that the rich creditor should be merciful to his impoverished debtor; but the judge must sustain an execution for the uttermost farthing, under the harshest conditions, unless the will of the State, as expressed in its law, allows some exemptions. In short, the will of Deity, so far as the official action of the judge is concerned, is that he shall do his duty, and that duty consists in complying with his official oath to support the constitution.

We see, then, that the judge who permits his view of the Sunday law (or any other law in free America) to be clouded by his notions of what are and what are not commands of Deity, confounds the official character of the legislator with his individual character, and his own duty as a *judge* with his duty as a *man*. And one who does this manifestly approaches the decision of the constitutionality of the Sunday law or its construction, in a non-judicial frame of mind.

And with a conscientious and intelligent judge, as with a conscientious and intelligent legislator, the very fact that he finds in a certain statute what he believes to be the embodiment of a divine command, would arouse suspicion of the statute, and excite to rigid self-examination. He would perceive that the recognition of a divine command, the determination of the question whether any particular command be divine or not, is a religious matter altogether; and that, in making up his own mind on the subject, he was necessarily

giving a preference to one religion over another. And then he would naturally suspect that a statute which appeals to this preference in him, embodies this preference in its provisions and commits the legislature thereto.

And this suggestion, based on his own sentiments or feelings, would be strengthened, as in the case of the legislator, by the intense interest of certain professional religionists in his sustainment of the statute; and the arguments, before him and elsewhere urged, as reasons for his sustaining it would co-operate with his inner consciousness, to convince him that such a preference was both intended and effected by the statute. And a judge, intellectual and conscientious, putting this and that together,[2] would soon see that if he sustained the constitutionality of a law either because of his own preference on religious grounds for the conduct it prescribed over any other conduct, or because of such a preference in other people, then he would be necessarily holding valid an act of the legislature which gave a preference to one religion over another, and holding it valid *for that reason*, in the very teeth of the constitutional inhibition of any such preference.

It was said, when speaking of the influence of Brownism on legislators, that it produced two prejudices — one with reference to a command of Deity that men should be idle on Sunday, and one with reference to an intimate and necessary connection between the existence of a Brownist Sunday law and the common weal. This second prejudice also arises from the same influence on the Bench. Its effect upon the legislator is evidently to throw him into a non-legislative frame of mind. For legislation requires that no proposed statute shall be passed, or the repeal of a statute be voted on, except after careful examination of details, within the document and without, an impartial consideration both of

2 See the case cited in page 147 of the "Spiritualist Camp-meeting," the "religious" character of which being disputed, was left to the jury.

its provisions and of the conditions which it is required to meet.

The first question the true legislator must ask himself is, Does expediency demand any legislation at all on this subject? And the second is, Have I before me the most expedient legislation under the circumstances? As to many things, the first question may at once be answered affirmatively. It is admitted by all, that we must have statutes or "common law" for murder, robbery, etc. But it is not admitted by all, that we must have a Sunday law, and it is admitted by comparatively few that we must have a Brownist Sunday law. So that, when Brownism clouds the mind of a legislator with the prejudice that such a necessity exists for its Sunday law as exists for a law against murder or robbery, it prevents him from that examination of this question on its merits which is absolutely necessary to the proper discharge of his duty as a legislator.

A precisely similar effect results from this prejudice about the connection of a Brownist Sunday law with the common weal, on the Bench. It inclines our judges to associate the general welfare so intimately with a Brownist Sunday law, that they are impressed with the idea that they must sustain the law at any price, and prevents them from giving it that impartial consideration on its merits which their official oath requires them to give. There is no logical connection between the proposition that a law is a good thing to have, and the proposition that a legislature under a written constitution may pass the law. But it is true that a judge is biased in advance when he imagines that a statute before him is in some special way promotive of the general welfare. And the influence of Brownism goes farther than this; it does not only foster the impression that the Brownist Sunday law is a good thing to have, it tends to foster the impression that the law is a thing which it is absolutely necessary for us to have. And to consider its constitutionality under the

influence of such an impression as this, is to approach the subject in a non-judicial frame of mind.

But here let us refer again to what has already been said in extenuation of intellectual dishonesty. Our judges are entitled, like the persecutors of old, and those would-be persecutors, the Brownist clergy of to-day, to the benefit of that religio-psychologic principle which forbids one soul to adjudge the responsibility of another for its belief, or its way of arriving thereat; which teaches that sincerity may well exist where it seems to be totally lacking; which warns us that the most able and the most honest of men may be satisfied in their own minds that a train of reasoning has driven them to a certain conclusion, when, in reality, the conclusion was predetermined, and the reasoning invented or distorted to fit it.

With this truly Christian and right allowance for human infirmity, we shall forefend the imputation of disrespect for the Bench, while we examine and weigh without fear or favor, and on the merits of the case alone, the various grounds upon which the Established Church of Brownism, as embodied in the idle and cheerless Sunday, has been sustained in American law.

And this mercilessness in dealing with the positions taken, while neither feeling nor expressing disrespect for those who have taken them, is absolutely necessary to any profitable discussion of the subject. Because, when a judge approaches a question of law in a non-judicial frame of mind, and when he therefore bases his conclusions upon reasons which did not lead him thereto, and could not lead any judicial reasoner thereto, he is guilty, consciously or unconsciously, of intellectual dishonesty. And the evil results of intellectual dishonesty to mankind are the same, whether he who practices it does so "with malice aforethought and evil intent," or otherwise. The clergyman who practices it, though his own conscience may acquit him of willfully doing so, is,

when detected, under a suspicion fatal to his usefulness; and it is obvious that the state of a judge's conscience has nothing whatever to do with the effect on the material interests of the community, of his considering questions brought before him in a non-judicial frame of mind.

Is it a fact that American judges have approached the consideration of Sunday laws under the prejudice that Sunday idleness is divinely commanded, and that they have wrongfully permitted that prejudice to influence their view of these laws? Let us see.

In New York, we are told by Judge Kent, "the statute has for over a century recognized the sanctity of the day, and punished its (the sanctity's) violators."[1] In Georgia the code denominates Sunday "the Lord's day," and *as the Lord's day all courts and magistrates are to consider it*,[2] and the Sunday law of that State "*but re-enacts the law of the Almighty.*"[3] In Arkansas the day is "*set apart by divine appointment as well as by the law of the land;*"[4] in Pennsylvania the phrase is "divine command and human legislation;"[5] and in Iowa we are told that the idle and cheerless Sunday is "established by laws both human and divine."[6]

Now, the language of these cases is not rare nor exceptional. They are types of a very large number, and the spirit which pervades them and which prompts the use of such language, pervades many others. When we remember that this language is used in cases where the sole question involved was the constitutionality of a human statute, passed by a human legislature, whose being was created and whose powers were limited by a human constitution, we appreciate the fact that it unerringly indicates a non-judicial frame of mind.

1 Ruggle's Case, 8 Johns, 290
2 Bass *vs.* Irwin, 49 Ga., 436;
3 Salter *vs.* Smith, 55 Ga., 244.
4 Stocklen's Case, 18 Ark., 186.
5 Johnston's Case, 22 Pa., 102.
6 Davis *vs.* Fish, 1 Green, 406.

CHAPTER VI.

The Objection to Sunday Laws, that They Are Immoral in Spirit and Tendency.

If the only result of the Sunday law was to accomplish its amiable purpose of rendering the non-Brownist wretch uncomfortable, its operation might not be quite as objectionable as it is. The discomfort of the non-Brownist may not be very serious in many cases; and if we set off against this, the enormous enhancement of the Brownist's felicity, which results from the knowledge that one who does not agree with himself is uncomfortable in consequence of his contumacy, it may be plausibly maintained that the aggregate happiness of the community is increased rather than diminished by the Brownist Sunday law.

But, though the non-Brownist's discomfort be small, and the comfort of the Brownist exceeding great, yet the principle, *de minimis non curat lex*, cannot be invoked to justify the Sunday law. And though the net result of such a law be increased happiness, this cannot save it. For, as already shown, the mere fact that a law may be, on the whole, a good thing to have, is no reason whatever for the assumption that an American legislature may enact it. And the fact is that the main objection to a Sunday law is not its effect on the comfort or happiness of the people at all, but its effect on their manners. And though legislation of any character be promotive to the utmost of the general happiness, yet, if it be at the same time conducive to general demoralization (and pleasure may be purchased at the cost of character by

nations as well as individuals), then it is unwise legislation, and blots the statute book.

Can this be shown of Sunday Laws — that they do produce and must from their very nature produce demoralization in the community? It is believed to be easily demonstrable that these laws are an unmitigated evil in many respects, and that the demoralization they work is so great that the Brownist's delight in their existence cannot be legitimately considered as an offset. This demoralization, as will presently appear, affects the Brownist as well as others, and may be considered as resulting —

1. From the spirit which inspires their enactment.
2. From their non-enforceability.
3. From the immorality which their provisions foster and inculcate.

The harm done under the first head is done largely to those for whose gratification Sunday laws are passed. These laws, by their very presence on the statute book, demoralize and *de-Americanize* our Brownists. No matter how strenuously they deny it, they are at once demoralized into hypocrites; they instinctively recognize in a Sunday law a union of their Church and the State. And this un-American thing, kept ever before their eyes, makes them evermore un-American. The spirit of ecclesiasticism is essentially aggressive. It is the old, old story of the camel by whose earnest solicitation the Arab was persuaded to allow the insertion of the brute's head within the tent, and who shortly afterward insinuated his entire body beneath the canopy, and thrust the Arab out altogether.

The Sunday law is the camel's head intruding on the State's domain. It constitutes *pro tanto*, a union of the Brownist Church with the State. And its existence is the chief cause and encourager of that moral disease which ever and anon breaks out among us, and is now known, from the name of its most conspicuous recent victim, as

"Parkhurstism." Parkhurstism is to a large extent one of the penalties we pay for the cheapness and enterprise of modern journalism. For this has developed in every quarter, —and nowhere more strikingly than in the pulpit, — a sickly hankering after newspaper notoriety, which may be justly described as the characteristic weakness of our age. But the particular manifestation of this influence known as Parkhurstism would probably be lacking in the pulpit, and would certainly rage with far less frequency and violence than it does, but for the Sunday laws. Parkhurstism consists in setting up for the Master, in his despite, a kingdom of this world. It consists in the assumption that because a man is a preacher, therefore he knows more about civil administration than those whose lives are given to the study and practice of civil administration. It consists in the application to the clergy and Christian Church of those political and militant functions which were assigned to the prophets in the later Hebrew economy of the Old Testament. It consists, in one word, of the union of Church and State. And it finds no stronger temptation, no greater justification for its most arrogant assumptions, its most absurd vagaries than the presence, in American statute books, of these Brownist Sunday laws, which admit the authority of ecclesiasticism in civil affairs, and embody the union of the Brownist Church with the State.

And on other people than Brownists, the spirit which inspires the enactment of Sunday laws works its demoralizing effect, in that it prepares their necks for the yoke of the Established Church which the Brownists are forever endeavoring to fasten upon them. A little of the yoke is in place already in the Brownist Sunday law; another joint is fastened in the exemption of church property from taxation; smaller bits are attached here and there in the shape of provisions against blasphemy, qualifications of religious belief for witnesses, officeholders, etc. And the hope ever lives

that by being made accustomed to the galling of these detached portions, the patient public may one day be persuaded to have them all linked together in a solid yoke, and submit to be driven and guided by the priests of the Brownist Church by law established. And there is no doubt that there is some ground for this hope, and that the Sunday laws do tend to make the masses of the people more inclined to play the silly part of the Arab in the story, just as they constantly stimulate the spirit of the camel in our Brownists.

But if the political sense of the non-Brownist portion of our people is dulled, and their watchfulness over their liberties weakened, by Sunday laws, it is none the less true that their moral character is seriously impaired by these laws. Enough has been said of the blasphemous materialistic notion which Sunday laws promulgate,— that the Creator "needed rest like a man." From a secular standpoint the notion they promulgate, that physical idleness is a good thing in itself, and that the State is conferring a boon upon the citizen by allowing him an opportunity to indulge therein, is no less pernicious and objectionable. No more immoral lesson could be preached by any legislation than this.

The thoughtful student of our history will note a remarkable difference between the *Zeitgeist* of our time and that of fifty years ago regarding this question of labor and idleness. Horace Mann once voiced what was considered the distinctive American doctrines upon the subject. In Europe labor had for centuries been considered degrading. To be "respectable," one must be idle. A very few years since, a great English novelist considered that he wrote nothing incredible when he described how "a country gentleman" turned his brother's picture to the wall, and wrote on the back "gone into trade." Now many English noblemen have "gone into trade." But for our having slipped away from the teachings of Horace Mann and his school, we might hail this and other like phenomena as triumphs of Americanism, the victory of

the republic's ideals over the prejudices and superstitions inherited from the feudal ages. But, alas! Horace Mann and his school are no longer the representatives of Americanism. With them, the dignity, the honor, the physical, moral and mental advantages of labor were the burden of an incessant song. "The divine love," it was proclaimed, "tempered justice with mercy, in that it made industry pleasant and profitable to all right minded men, when making it necessary for the preservation of the race." With them, not only must every man work to be respectable, but other things — capacity, kind of work, etc., — being equal, *the most respectable man was the man who worked the hardest.*

Does any such standard of conduct now obtain in the Republic? We have labor organizations in abundance. Knowing the natural tendency of the human heart to shirk, and recognizing the influence of public opinion on individual conduct, we can see from Mann's standpoint a very desirable function for which such organizations might well be formed. Their object would be, say, primarily, a sort of natural insurance, with "sick benefits," etc. And then they would fix on the most hours of work, and the utmost amount of the best work per hour which a high average of the zealous and industrious among them could healthfully endure, and debar from all advantages of their union any who fell below it. Being labor organizations, their main purpose, of course, would be to develop the capacity for labor, and increase the quantity as well as the quality of the output of labor to the utmost. Consequently, they would offer prizes in medals and money to those who should show extraordinary ability in the way of working many hours at a stretch, turning out a large quantity of the best work per hour, etc. And as excellence in labor or anything else can only come out of individuality left to the most perfect freedom, the unions would strenuously set themselves against compelling anybody to do or abstain from anything, save at his own sweet will, unless he interfered with a like liberty in others.

But our labor organizations are not constructed on the ideals of Horace Mann. Their standard is the mass and not the individual, hence, necessarily, they tend to mediocrity, instead of excellence. But their standard is not even the average of the mass, it is the lowest plane, it is the standard of the most lazy, shiftless, incompetent among them. Not the most or the best, but the least and the worst possible work is their aim. Instead of regarding work as something so essential to the formation and the preservation of character that a wise man will seek it or even *make it* for himself though he has no financial need of it, their doctrine is that work is a pestilent evil, to be avoided to the very utmost. They have cast down the image of Industry from its American pedestal, and set up the European god of Leisure in its place. They teach that laziness is a virtue and energy a vice, and that idleness and not labor is the true end of man.

Doubtless this "topsyturvification" of the true American idea is one of the many evils which, along with many advantages, have resulted from the large foreign immigration of recent years. Millions of the most active and aggressive of our citizens have come from countries where the ignominy and shame of labor have been an axiom of thought for many generations. They and theirs have from the very dawn of civilization been looked down upon by idlers because they worked; and have acquiesced, as if it were in the nature of things that laborers should be scorned by loafers. They have been accustomed to find themselves classed with beasts of burden, because these work, and to tacitly acknowledge the justice of the association. No wonder, then, that their first great idea in coming to the United States is, as soon and as much as possible, to shake off this badge of inferiority and degradation; that when you talk to them of freedom, you suggest to their minds freedom from work and nothing more nor less. How is it to be expected that they should understand the American idea that the loafer is the blackguard, and the steady, industrious, faithful laborer is the gentleman?

Now, experience shows that the European, or feudal, conception of work as a badge of inferiority is not inconsistent with a civilization based on other things such as hereditary rank, militarism, state-religion, and the like. All these absurdities and fallacies existing together counterbalance each other; and not only is society held together, but some very high types of character are developed, however great the sacrifice of other lives for theirs. But sound philosophy teaches us that some ideas which experience shows may safely prevail under European social conditions, will prove fatal to the free government under which we live. And among those ideas sure to poison the life blood of the Republic is the idea that labor is ungentlemanly. The European workingman who settles here does not appreciate it, but in his intense desire to work as seldom and as little as possible, he is attaching to labor this foreign stigma, and destroying the chief distinction between the *Zeitgeist* of America and Europe, which renders our country so preferable for all such as he. By frankly showing that in his own eyes the work he does is a detestable thing, to be avoided to the utmost, and only done under the pressure of absolute necessity, he is creating a popular idea of himself not as a free and independent citizen, a "sovereign" ruler with other sovereigns over a great country whose governors are his commissioned representatives, but as a miserable serf, driven to his work like a beast, down-trodden and degraded.

It is amazing that it never occurs to our foreign labor agitators that their continual persistence in speaking of workingmen as slaves and "vassals," tends gradually to undermine the self-respect of the men, and make them more or less regard themselves in that depreciatory light, and *feel and act accordingly;* while such language, too often supported by conduct so childish and reckless as to seem to justify the epithets by which it is incited, must also inevitably conduce to the establishment in the community at large of just that

contemptuous idea of wage-workers which the words express, and which is the European and feudal and not the proper American and republican idea about such people. Well, then, these foreigners, with their European notion that labor is degrading and idleness is honorable, are by nothing they find here at once so encouraged and helped as they are by the presence of Sunday laws on our statute books. For this foreign idea of theirs is part of the very essence of Sunday laws, and in them they find American States preaching already to their citizens the un-American doctrine that idleness is a good thing in itself, to be desired and sought after for its own sake, and that legislation for the promotion of idleness, is a boon from the government to the people.

Thus the evil seed of general Sunday laws not only brings forth the fruit after its kind of special Sunday laws under the influence of labor agitation, but these laws by their very presence on the statute books afford a constant suggestion and incentive to those who would have the State abridge the citizens' liberty of labor and contract by the enactment of what is strangely enough, called "labor legislation," such as "eight-hour laws," and the like; all of which, like the Sunday laws, are reflections on labor and its dignity, and are passed in opposition to it, and for the promotion of its direct antithesis,— idleness.

Two instances may be mentioned of special Sunday laws which would never have been dreamed of but for the suggestion of the general law. In 1892 there was an attempt to forbid by law the delivery of ice from wagons on Sunday within the city of Washington, as was done long before in Baltimore. The hardship of such a law, of course, fell entirely upon the poor people, who, having no refrigerators, or very small ones, could not store enough ice on Saturday to last them over until Monday. To the wealthy no particular inconvenience was occasioned. Now the first suggestion of such a law as this was born of a dishonest impulse, or that

desire to get something for nothing which was the inspiring impulse of Dick Turpin and Jesse James. The men who delivered ice from wagons wanted to draw seven days' pay for six days' work, and hence they moved for a law making it penal for them to deliver ice on Sunday, but laying no penalty on the employer who should pay them, upon the assumption that they broke that law, and give them as wages what they had done nothing to earn. Of course neither the sufferings of the poor, nor the immorality of the idea, neither the cruelty nor the rascality of the thing, deterred the Brownist clerics from giving it their enthusiastic support in both cities.

Again, there is the case of barber-shops. Notwithstanding that one who shaves another on Sunday would seem to offend against most general Sunday laws, there is every now and then a clamor — mostly, it is believed, successful — for the passage of a special act for certain localities against Sunday barbering. Now this clamor originates, if not in dishonesty, at least in laziness. That it should ever be successful is as serious a reflection on the character and manliness of American legislatures, as anything in our political history. And nothing could illustrate better than its success, the truth of our proposition that it is not possible for the average American legislator to approach the consideration of any Sunday law, without falling at once under the influence of intellectual dishonesty and into a non-legislative frame of mind.

Here come a number of barbers, Messrs. A, B, and C, and ask the legislature to compel another certain number of barbers to close their places of business during certain hours every week. And why? — Simply because A, B, and C do not choose to keep their shop open during those hours! That is to say, X, Y, and Z are to be compelled to be idle against their will in order that their spirit of industry may not reap its just and wholesome reward in competition with

the spirit of idleness which governs the conduct of A, B, and C! Every Sunday law is, indeed, legislation for the promotion of idleness. But the present case is so glaring that it points the moral with peculiar force. We can grasp in all its monstrous infamy and absurdity the true nature of such laws by substituting grocers, for instance, in the place of barbers, and Monday in the place of Sunday. Then let us ask, What legislator would dare to put a premium on laziness by voting for a bill to compel X, Y, and Z to close their grocery stores on Monday, because A, B, and C did not desire to keep their grocery stores open on that day — what A, B, and C would dare to clamor for such a law?

These laws are also demoralizing by reason of their very presence in the statute book, because they are not reasonably enforceable, or, in fact, enforceable at all; and the value and effectiveness of all law is weakened by the company of laws of this kind. And this quality of non-enforceability Sunday laws share with all other laws directed against vice and immorality, as will presently appear. Clerics, with their minds always fixed on an expected coalescence of Church and State, frequently clamor for a law which would plainly be unenforceable, in the same sense that many of the laws which attest the survival of a partial union of the two among us, are unenforceable. And when they are asked, What is the use of making a law which will not be indorsed by public opinion to such an extent as to be reasonably enforceable? they reply in some such language as that recently used by a distinguished Southern bishop, to the effect that there ought to be laws *expressing the moral sense of the people.*

"Experience teaches," said, in effect, the dignitary alluded to, "that the moral sense of a people never rises above their legislation." Now, if there is anything in this world which all experience and history do teach, it is that there is no connection whatever between the legislation and the morality of a people. One illustration here is as good as a

dozen. Never were "sumptuary laws" more severe and exacting than in the time of Rome's greatest extravagance and dissoluteness. This was under a despotism. Under a free government, not only is the standard of morality always higher than the standard of the law, but it is found in practice that it is inexpedient to *attempt* to raise the latter to a level with the former, while the failure of any such attempt is a foregone conclusion.

Thus the moral obligation to do a thing exists without any reference whatever to the question of whether one has promised to do it. And the moral obligation to keep one's promise is not in the least affected by the question of whether or not there was a "consideration" for the promise. Nor does the form in which the promise may have been embodied, in the slightest degree affect its moral obligation. The law does, for economic reasons solely, recognize certain obligations independent of promises and connected with the general or special status of the citizen — such as the obligation of every citizen to keep order, and the obligation of a parent to support a child. But it pays no respect whatever to the moral element of any obligation apart from its civil or pecuniary aspect. Thus, the citizen ought to be as decent in solitude as in crowds, under the moral law. But the civil law does not follow him into his closet. The parent owes his child kindness; the law will force him to feed and clothe it. So the law requires a consideration for a promise before it will take cognizance of the latter; and certain promises it requires shall be evidenced in a certain way in order to be enforceable in its courts.

Again, I owe a man money; if time enters into the question at all, surely the longer I owe it, the greater my moral obligation to pay. At least it is grossly immoral to plead my own delinquency for years as a final reason for repudiating the debt altogether. But the law takes no such view of the matter. The moral aspect of the situation does not give it

any concern. It looks at the civil aspect alone. It adopts, as a maxim of *civil expediency*, the principle "*interest rei publicae ut finis sit litium*,"— "It is the interest of the State that there should be a limit of time to litigation," and therefore it says to my creditor that if he has not within a certain number of years compelled me to pay him my debt, then he shall not compel me to pay it at all. Nor is it any answer for him to plead that it was impossible for him to collect his debt within the time thus arbitrarily fixed. And the law further shows its perfect indifference to moral distinctions in this regard, by fixing different periods of limitations for debts attested in different ways, a note must be sued on in so many years, a mortgage debt collected within such a period, a judgment realized upon in another, and so on. Thus, debts have a different "dignity" in the eyes of the law. But in the eyes of morality they are one and all the same.

We see, then, that at the very foundation of the law lies this distinction between a civil and a moral obligation; and that it is not necessarily advisable to incorporate into law a point of morals, even where the point is almost universally agreed upon, as in the matter of the life-long obligation to pay a pecuniary debt. And we must also bear in mind that there is a vast domain of morality wherein there is by no means this approach to universality of sentiment, but on the contrary a variety of opinions at least as numerous and unlike as the varieties of eyes and hair. And into this domain the law will never penetrate, because it has absolutely no means whatever of deciding between these conflicting opinions, and because of its grand saving principle that it will attempt no impossibilities, and will go nowhere without a guide.

So much, then, for the objection to Sunday laws as immoral, alike in spirit and tendency, injuriously affecting those who desire them and those for whose constraint they are desired.

PART III.

THE CONSTITUTIONAL ASPECT OF THE QUESTION.

OBJECTIONS TO SUNDAY LAWS ON ACCOUNT OF THEIR NATURE AS EMBODIMENTS OF THE UNION OF CHURCH AND STATE — JUDICIAL EVASIONS OF THIS HISTORIC FACT EXAMINED.

CHAPTER I.

Objections to the Religious Grounds on which Sunday Laws have been Sustained.

SOME may think that we might well have stopped with the dèmonstration from history that Sunday laws represent and embody a union of Church and State, because as soon as this demonstration is accepted, the inconsistency of such a union, with American ideas of government, must cause them to be swept from the statute book of every State, without further argument. And when to this demonstration is added proof positive that Sunday laws are false in their essential basis, and altogether pernicious in their results, the case might seem strong enough to leave to that intelligent jury, the American people. But the fact is, that this historic truth that Sunday laws represent and embody a union of Church and State has, under one pretense or another, been deliberately ignored by our judges for more than a hundred years. And it is necessary that these pretenses be examined and exposed, lest any one should imagine that they have been purposely avoided here, or that judicial ingenuity has ever discovered a single sound argument to offset the objections to Sunday laws which have been set forth in the preceding pages.

But, again, the question might be asked, If the courts have uniformly upheld these laws, is not that, practically, the end of the matter? The answer is, No. This little book has a two-fold purpose, one, indeed, in substance. Its one purpose is to discredit Sunday laws, and to bring

them into the utmost possible disfavor. Its two-fold purpose is to initiate and stimulate a public sentiment which will one day force their repeal; and at the same time to show the fallacy of all the reasoning by which their right to exist in American statute books has been vindicated. And this last purpose is not quite so vain as to some it might appear.

For, according to a well-established principle, it is not the cases, but the reasoning of the cases that makes the law. And even an overwhelming weight of authority may be weakened by a demonstration that the conclusions reached are not justified in any case by the premises from which they are drawn. And if no other reasons can be found than those alleged, why these conclusions should be adopted, a clear-headed and right-minded judge may at any moment arise who will brush aside the casuistries of the rest, and rule according to honesty and right reason alone. It is, indeed, only by repeated "hammering" that "bench-made law" is beaten into new shapes, fitted to the ideas and needs of an advancing civilization.

The limits of this publication will not admit of an exhaustive examination of all the Sunday-law cases in the United States or early English reports. An effort to group them properly and with reasonable completeness has been made in a little book called "Sunday; Legal Aspects of the First Day of the Week," by the present writer (Linn & Co., Jersey City). But it is believed that in the following pages, the reader may safely calculate on finding, fairly stated, every argument ever judicially adduced to sustain these laws. And it is further believed with absolute confidence that it lies not within the power of the human intellect to devise one single argument to sustain them which is not here both fairly stated and fully examined.

Future cases may follow more or less servilely the "precedents," as Holt did the "precedents," for punishing witches. They may repeat, poll-parrot wise, what has been

said before. But it seems impossible that anything new should be found in them, so thoroughly has the ground been covered, so microscopically careful and exhaustive has been the search for casuistries wherewith to defend an untenable position in the past. The encouraging point is that, while the exposure of these old casuistries has been so complete that judges of the deepest-dyed type of Brownism have learned to fight shy of them, yet for many a day no new casuistries have been devised to take their place. The field has been covered long ago, and an uneasy consciousness that the covering is not sound is making itself felt.

Hence, we may confidently anticipate that what has some time since begun will continue, or, in other words: (1) that the judges, in sustaining Sunday laws, will more and more confine themselves to referring to the "authorities," and more and more forbear to consider the question on its merits; and (2) that they will be understood to do this because the defenders of Sunday laws have been driven from one citadel to another, until, as "the thoughts of men are widened with the progress of the suns," it has become plainly evident to all judges of elementary common sense that Sunday laws have not one single merit to rely on in America.

The divine command supposed to be embodied in the Brownist Sunday law, is that Sunday shall be "kept holy;" and this law is designed to preserve the *sanctity* of the day in New York;[1] and the Georgia statute is based on the fact that Sunday is a "holy day;"[2] and that of Iowa sets it apart as "sacred;"[3] and the same position is confidently taken in many other cases. There is some little confusion of ideas as to the manner in which Sunday acquired this character of sanctity. In New York it seems to have been "consecrated" by statute,[4] and in Georgia, it

1 Ruggle's Case, 8 John's., 290.
2 Weldon's Case, 62 Ga., 449.
3 Davis *vs.* Fish, 1 Green, 406.
4 Ruggles Case, 8 John's., 290.

is the "Lord's Day," as a mere matter of law.[1] But generally the sanctity is ascribed to divine law, which is merely "recognized" by the State statute.[2]

Now the question of sanctity in a day, or a place, or anything else, is manifestly altogether a question of religion; and an attempt to enforce by law the sanctity ascribed by any religion to a particular day, unless the sanctity ascribed by all religions to all days be recognized in the same way, is so obviously a preference of one religion over another that it has been repeatedly accepted as such, and as such sustained by the courts. It will not be denied that to defend an acknowledged preference, in the very teeth of a prohibition of any preference, is a task worthy the highest efforts of judicial casuistry. And worthily has it been discharged. Blackstone, of course, who is nothing if not logical, puts breaches of the Sunday laws among his "offenses against God and religion;"[3] considering these laws as passed for the enforcement of a religious dogma, in which — their true character — they are well enough in a country where the church is by law established. But, calmly ignoring the fact that according to the theory of our American constitutions there is not, and cannot be any church here by law established, many American judges adopt the English view and still uphold American Sunday laws. We are boldly told that the purpose of the compulsory idleness required by these laws is "to turn men

[1] The argument of this chapter proceeds throughout on the assumption that the idle and cheerless Sunday is a dogma upon which Christians are unanimously agreed. At every step of this discussion, as the reader will observe, it is necessary to concede *some* fallacy to the advocates of Brownist Sunday laws, in order, so to speak, to get them into court; we must let them set up the men of straw with which they have so long deluded the people, so that the puppets may be satisfactorily bowled down. It has been shown elsewhere that the idle and cheerless Sunday, by civil law established, is not a Christian dogma at all, and was never introduced into the world of thought till Christianity was more than sixteen hundred years old, when it was evolved out of the inner consciousness of the Brownist sect of the Puritan sect of English Protestants; and, moreover, that the idle and cheerless Sunday by civil law established, is by no means accepted as a dogma by all, or even a majority of Christians of to-day. Weldon's Case, 62 Ga., 449.

[2] See Johnston's Case, 22 Pa., 102; Stockden's Case, 18 Ark., 186; Davis *vs.* Fish, 11 Green, 406.

[3] Vol. ii, p. 264.

to the duties of religion," and "enforce the observance of religious duties;"[1] "to promote and establish religion among us;"[2] and "to induce the observance of the duties of religion in society;"[3] and that the day is "wisely recognized by law as a day of rest to be devoted to religious contemplation and observance."[4] And plenty more citations to the same astounding effect may be found in "Sunday," etc., the work already referred to.

The religious character of Sunday laws being understood, it remains to demonstrate the claims of the religion recognized by them, to be considered as an exception to those provisions against preferences to which all other religions are subjected. The absence of any express exception in the provisions themselves, strongly militates against the idea that it was intended by the Constitution-makers that any exception should exist. And it is a bold thing, indeed, for a court to engraft an exception of its own on a constitutional provision which is not only as general in its terms as it could well be made, but which is utterly valueless if weakened by any exception whatever, and is, therefore, by such a judicial construction, practically nullified altogether. Yet it is true that an exception to a general rule in one part of the Constitution may be created by the language of another part, where such a construction is necessary in order that both parts may stand.

Now the religion which is supposed to be entitled to a preference in the recognition of its sacred day and to receive that honor in the shape of a Sunday law, is Christianity. And its right to be considered as an implied exception to the provisions against preferences between religions, is based on the fact that it is a part of our constitutional law, having been a part of the common law, to which nearly all the State constitutions declare that the people are entitled.[5] As already

1 George *vs.* George, 47 N. H., 27.
2 Duprey's Case, Bright, 44.
3 Kounty *vs.* Price, 40 Miss., 341.
4 Moore *vs.* Hagan, 2 Duv., Ken., 437.
5 See the reasoning set forth in quotations in "Sunday," etc.

observed, these declarations are usually accompanied by some such phrase as "so far as applicable," etc. ; but, even without any qualifying phrase, they do not justify the assumptions based upon them.

Let us concede that Christianity is part of the common law referred to in our Constitutions. Even then, it would not follow that Christianity is part of our law. It is an established rule of interpretation that where one construction will allow two clauses of a constitution or statute to stand together, and another will require the sacrifice of one or the other clause, the first construction is always to be preferred. Now, if we infer that the adoption of the common law carries with it the adoption of Christianity, as just observed we destroy completely the provision against preferences between religions. All that the majority of any legislature has to do is to determine that the teachings of one particular sect constitute Christianity, and its right to a preference, to be made a church by law established, and to insult every other aggregation of believers with its tolerance, or persecute them at its own sweet will, is at once demonstrated.

On the other hand, to maintain intact the provisions against preferences between religions does not destroy the adoption of the common law, but merely fixes an exception thereto. The two clauses, standing together, amount to simply this : The common law of England is adopted here, save and except so much of it as is connected with the English union of the Church and State, and *so much* is in terms repudiated. There are various provisions in every State constitution which qualify the adoption of the common law, besides the prohibition of religious preferences, such as the prohibitions of hereditary titles, bills of attainder, etc., etc. No court would think of nullifying these safe-guards by appealing to the most general terms of the adopting clause. Yet the guaranty of religious equality is more valu-

able than all the other repudiations of common law atrocities put together.

The fact is that the claim that Christianity is a part of American law, proves too much. We have seen that it enables the legislature to set up at any time an established church of its own. It is hard to see why this right does not involve a duty,—why our legislators are not bound by their oaths to settle just what is and what is not Christianity, and to incorporate in statutes whatever else they may conclude to be its dogmas besides the idle and cheerless Sunday. In England, no court can sit in judgment on the constitutionality of an act of Parliament. But the courts in this country have always admitted that the constitutionality of Sunday laws is properly within their purview. So, presumably, it will be when other religious dogmas besides the idle and cheerless Sunday have become a part of the statute law. And a fine, ennobling, an essentially American spectacle we shall have, when our judges undertake to distinguish heresy from orthodoxy, and such questions as the difference between "*homoousion*" and "*homoiousion*" come to be argued at our trial tables. Absurd as this suggestion sounds, it is no more absurd than the attempt to establish the idle and cheerless Sunday as an American institution, on the ground that it is a part of the Christian religion. The right and the duty to establish and maintain a part, involves the right and duty to establish and maintain the whole, and neither a part nor the whole can be established or maintained without determining in some way the claims of the part or of the whole to be considered orthodox Christianity.

And this brings us to the fatal difficulty about the view under consideration. If, at any time, the position of the idle and cheerless Sunday as a Christian institution is assailed, then its right to exist as a State institution can only be settled by an express judicial settlement of the question, What is Chris-

tianity? And, as before observed, our courts have no means whatever of settling this question. They are furnished with no standard by which to discriminate between orthodoxy and heterodoxy; they cannot decide what are and what are not "canonical" writings; they can determine neither the original reading, the correct translation, the significance, nor the application of any passage in a religious book. In short, they are not ecclesiastical courts, and cannot adjudicate the rival claims of churches to be exclusive or superior guardians of the Christian truth.

If any demonstration of the verity of this objection to the civil maintenance of Christian institutions, as such, were needed, it would be found in this very case of Sunday laws. A large and increasing class of Christians hold that Saturday and not Sunday is "the Christian Sabbath." What is an American legislature, or an American court, that it dare undertake to decide between them and others such a point as this? If the answer comes, "But the majority decides," then this is answered in turn by saying that the majority, or what passes for the majority, can decide no such question without an act of revolution. The very object of constitutional guaranties is to limit the power of the majority, to enumerate points which it shall not be permitted to decide,— and among the points mentioned, in one phrase or another, in every American constitution, is this very point of deciding between religions, and thereby extending "preference" to one or the other.

The matter is here dealt with as though the only question was one of preference between one community of Christians and another. But in truth the preference would be the same though all Christians were agreed as to the day and the obligation and manner of its observance. For there are other forms of religious belief among us besides the Christian; and it needs no argument to show that to recognize the *Christian* Sabbath and refuse the same recognition to the

Hebrew Sabbath, for example, is to make a preference of very decided character between two very different forms of religious belief.

Nor is the preference merely abstract or theoretical. According to the idea on which it is based, the idle and cheerless Sunday is forced upon a portion of the people because it is necessary that they should be idle and cheerless in order that others may preach and pray in a fitting manner and with due satisfaction to themselves. If this is so, then the same necessity exists on Saturday, and our Hebrew or seventh-day Christian citizens are very far from a position of equality before the law, and very decidedly "preferred against;" and indeed, are indirectly persecuted by the State, when it allows them to be so disturbed by others pursuing their regular occupations and pleasures that a proper observance of their sacred day is impossible.

This plain proposition has been conceded, and a desperate attempt has been made to "reason it down." The attempt has never been made more heroically, or failed more conspicuously that in the case now to be cited. The New York Constitution provides for "the free exercise of religious profession and worship without discrimination or preference," with the usual saving of "practices inconsistent with the peace and safety of the State." Considering the meaning of this language, a learned judge observes: "It would be strange that a people, Christian in doctrine and worship, and who regarded religion as the basis of their civil liberty and the foundation of their rights, should, in their zeal to secure to all, the freedom of conscience which they valued so highly, solemnly repudiate and put beyond the pale of the law the religion which was dear to them as life, and dethrone the God whom they openly and avowedly professed to believe had been their protector and guide as a people. Unless they were hypocrites, which will hardly be charged, they would not have dared, even if their consciences would have

suffered them, to do so. Religious tolerance is entirely consistent with a recognized religion. Different denominations of Christians are recognized, but this does not detract from the force of the recognition of God as the only proper object of religious worship, and the Christian religion as the religion of the people, which it was not intended to destroy but to maintain."

Let us pass by the unconscious blasphemy of this talk about men "dethroning" Deity; it is no worse than is often heard from the lips of the pious and well-meaning. It is not to be supposed that a Christain people will ever "repudiate" its religion. To put it "beyond the pale of the law," so far from being a step toward its repudiation, is distinctly a manifestation of increased respect and veneration for it. And it is no extravagant compliment we pay to the men of the last age when we regard this constitutional provision as largely inspired by their consciousness of the essential degradation of their religion involved in its connection with the civil law. At any rate, they thereby did one of two things,—they either placed their religion beyond the pale of the law, or they brought all other religions within that pale. For it is too plain for argument that to bring and keep within the pale of the law one "religious profession and worship" and to exclude all others therefrom, is to make a "discrimination," and to show a "preference" of the most decided character.

Did the people who adopted this provision really regard religion as the basis of their civil liberty and the foundation of their rights? This is not the American idea. It is the divine right of the king, in another form. By identifying the will of Deity with the existing order of things, whatever that may be, this view renders any attempt to change that order of things, peaceably or forcibly, a direct "flying in the face of Providence," as the saying is, a rebellion like that of Satan, as described by St. John. It makes blasphemy, as well as absurdity, out of those declarations contained in the

Constitution of New York and other States, of the right of the people to change the form of their government whenever it shall seem fit to them to do so. How dare a "Christian people" alter in any wise that system of liberties and rights of which their religion is the "basis"?

There is a sense, of course, in which religion, and the Christian religion of all others, is the "basis" of modern civilization; in which it has not only inspired the course of much legislation, and influenced our public life, but has made itself felt in the multitude of transactions between man and man, which neither are regulated by law, nor affect the community as a mass. Christianity permeates everywhere among us, and plays a part in everything we do, because it is that "pure and humble religion," as Gibbon calls it, which alone can at once suffice for the simple existence of Galilean fishermen, and answer all the complex conditions of modern society; because, in spite of all the evidence to the contrary, the Master's kingdom is set up in the hearts of men, and his Spirit is still working in the progress of the race. But to acknowledge this, his doctrine, as correctly defining its legitimate sphere of work, is, of course, to "repudiate" the use of the civil law either to define or enforce his religion.

The learned judge whom we have just quoted, observes that "religious tolerance is entirely consistent with a recognized religion." Undoubtedly, as between religions, it even assumes this. Tolerance implies forbearance. It is the act of a superior toward an inferior. It involves the power to be intolerant at pleasure. It denies a right, and asserts the granting of a favor. If the State tolerates, then she arrogates to herself a superiority to religion; if one particular religion tolerates the rest, it makes the same claim regarding them.

No man intelligently and morally capable of true religious feelings will accept a tolerance of his religion at the

hands of the State, or of any other religionists. Religious tolerance cannot be tolerated in America. The complete disseverance of State and Church, the absolute equality before the law, of all forms of religion and no religion, is the American ideal. In many cases, as in the citations above, we find the court ignoring the very language of the Constitution, and dealing with the question as though there were no provision on the subject, or the provision were couched in language altogether different from that actually employed.

"Religious tolerance is entirely consistent with a recognized religion," says the court. Suppose it is. Who asks for religious tolerance? What has religious tolerance to do with the question? Where is religious tolerance mentioned in the Constitution of the State of New York? The article and section supposed to be under the purview of the court contains no such phrase as "religious tolerance." It says: "The free exercise of religious profession and enjoyment without discrimination or preference shall be forever allowed to all mankind." Is there here the slightest suggestion of religious tolerance? The man who invokes such language as this against a Sunday law, no more asks for religious tolerance than he asks for civil tolerance when he attacks the constitutionality of a statute which would deprive him of life, liberty, or property "without due process of law." In both cases he asserts *a right*, against an attempted *usurpation*. He appeals, against legislative encroachment, to that fundamental law to which the legislature owes its existence, and by which it is as much bound as he is bound by any proper law it may pass. He has no more concern with the tolerance of the Assembly than with the tolerance of his next-door neighbor. Both the Assembly and his neighbors may be most anxious to impose their will upon him, to set him straight and keep him so, according to their notions, but neither extends him any tolerance when the strong arm of a constitutional provision is interposed between him and their

well-meant interference. He stands on a perfect level vith either, accepts no favors, tolerates himself no encroachment.

The New York court did not dare to quote the language of the Constitution in the passage just cited, because the inconsistency of that language with the position which the court had set out to maintain would have been too glaring. "Religious tolerance is entirely consistent with a recognized religion," says the learned judge. "The recognition of one particular kind of religion by the State, to the exclusion of all others, accompanied by a tolerance of the rest, is entirely consistent with a constitutional prohibition of any discrimination or preference between religions," was too monstrous a doctrine for him to put into words. And yet, the second proposition, and not the first, was relevant and necessary to sustain his view of the law.

Having settled it that Sunday laws constitute a State preference of one kind of religion over others, and are *therefore* valid in States where such a preference is expressly forbidden, the courts come next to wrestle with the problem, Is the reluctant Sunday idler constrained to idleness for his own sake or for the sake of those who would idle on Sunday without constraint? Is it the purpose of the law to force him to perform a religious duty required by the preferred religion, or merely to prevent him from interfering with the performance of that duty by others? The language of most Sunday laws is so general as to strongly support the idea that the spiritual betterment of the reluctant idler is what the State is aiming at. And many American cases take this reasonable view, which is the established one in England.[1] Thus the New Hampshire Sunday law is said to be designed "to withdraw a man's own thoughts from secular concerns and turn them to the duties of religion;"[2] and it "reminds the individual that he has religious duties to fulfill, and

1 See Fenneller *vs.* Ridley, 5 B. & C.,406. 2 Corsey *vs.* Bath, 35 N, H., 530.

religious duties alone."[1] The Massachusetts statute of "our Puritan ancestors," which "continues in force without any substantial modification," "enforces by penal legislation" the "observance of the day," which consists in "devoting" it "to public and private worship and to religious meditation and repose."[2] In Pennsylvania, the Sunday law is sustained because "it is of the utmost moment that the people should be reminded of their religious duties at stated periods;"[3] and in Kentucky the object of the law is that the day may be recognized "as a day of rest, to be devoted to religious contemplation and observance."[4]

Now it cannot be denied that any judge that takes this view of the purposes of a Sunday law, and imagines that he is justified in sustaining it on such grounds, is so completely blinded by the influence of Brownism that he is incapable of judicially considering the law at all. For a statute passed for the express purpose of turning a man's thoughts to the duties of religion on a certain day, of enforcing by penalty the devotion of that day to public and private worship, etc., must of necessity be designed to serve the purpose of a religious ordinance or decree, and to deal with matters that properly belong to such promulgations. And to pass a statute with any such purpose, is to exceed the powers of an American legislature, to prefer one religion to another, and to set up *pro tanto* the union of Church and State. So that if the reasoning of cases like those last cited were alone to be depended upon, Sunday laws would be doomed wherever the evil spirit of Brownism has not utterly enslaved the judicial mind.

There is, however, another class of cases which, while sticking to the view of Sunday laws as essentially religious regulations, yet considers that their design is not to improve the spiritual condition of the reluctant idler, but to enforce

1 Varney *vs.* French, 19 N. H., 233.
2 Davis *vs.* Somerville, 128 Mass., 594.
3 Wof's case, 3 S. & R., 48.
4 Moore *vs.* Hagan, 2 Duv., 437.

idleness upon him in order to prevent him from interfering with the measures taken by other people for their own spiritual improvement. These cases maintain that the object of Sunday laws is "the preservation of good order and peace;"[1] and that these laws are passed in order that religious exercises may be performed without interruption;"[2] and "to prevent the disturbance of our citizens in their religious devotions;"[3] and "to protect the religion of the community (*sic*) from unseemly hindrances;"[4] for "it would be a small boon to declare the indefeasible right to worship God amid the din and confusion of secular employments."[5]

Now let us assume that the fact that idleness of the portion of the community which does not engage in "religious exercises," is a necessary condition to the proper performance of those exercises by the other portion — let us assume that this fact, if it existed, would be a sufficient reason for holding that an American legislature may make such idleness compulsory. The question then is, Does any such fact exist? — It does not. The claim that it does, is insulting to the pious, and utterly without foundation. It is insulting to the pious; for whether the "devotions" be regarded as public or private, to assume that the special police conditions of the Sunday law are necessary to their proper and satisfactory performance, is to assume that the pious do not care to perform them on any day but Sunday. For it cannot be imagined that a pious person would engage in religious exercises under any conditions which rendered impossible their performance in a proper manner according to his light, and in a manner satisfactory to himself.

But everybody knows that this claim that the provisions of the Sunday law are necessary for the proper and satisfactory performance of religious exercises, whether private or

1 Hagan's Case, 20 How., Pr. 76.
2 Pearce *vs.* Atwood, 13 Mass., 324.
3 Adams *vs.* Gray, 19 Ver., 358.
4 Smith *vs.* Wilcox, 24 N. J., 353.
5 Johnston's Case, 22 Pa., 102.

public, is as utterly false as it is insulting to the pious. Such persons "know no Sabbath" in their private devotions. Their petitions go up in the evening and the morning of the first day and of all the other days of the week alike. Their "family prayers" may differ in length, but do not differ in kind, on Sunday from those of other days. It has never been suggested by any of them that these "exercises" require compulsory idleness on the part of other people for their performance with perfect propriety and to the complete satisfaction of the performers.

The general reference, however, of the necessity of this compulsory idleness of other people is not to the matter of individual or private devotion, but to the exigencies of public worship. The fallacy of the claim and its insulting character is just as plain here as in the other cases. There are the Seventh-day Adventist, the Seventh-day Baptist, and the Jew,— these all have their special week-day service of public worship on Saturday. They have never asked the State to make idleness on that day compulsory upon other people, in order that those services might be properly and satisfactorily performed by themselves. Alonzo T. Jones, Esq., recently represented with consummate ability the Seventh-day Adventists in their great struggle against the attempt of the American Sabbath Union, to commit the general government to a preference among religions.[1]

With the characteristic consistency and logical Christian spirit of the remarkable people to whom he belongs, Mr. Jones protested that he would be as dissatisfied with a "national recognition" of his Scriptural Sabbath, as he would be with the same recognition of the Sabbath according to Brownism. Any such proceeding he denounced as an embodiment of the union of Church and State which his people were pledged to oppose at all times and in any degree, and

1 See "The National Sunday Law' argument before United States Senate Committee on Education and Labor, December 13, 1888.

without regard to whether their own or any other religion might be preferred thereby. But Mr. Jones went further, and pointed out that the Seventh-day Adventists were in no wise whatever interfered with, in their Saturday services, by the work of other people, so that they did not need to have idleness made compulsory on others for the proper and satisfactory performance of such services, even if they felt that it would be right for them to ask the State so to prefer their religion; and, as just said, the experience of the Seventh-day Baptist and of the Jew is precisely the same.

As a matter of fact, however, no pious person is willing to confine his participation in public religious services, any more than he is willing to confine his private or family religious exercises, to any one day in the week. Accordingly, we find the Roman Catholics with some sort of public religious exercise for every day in the year; and the Episcopalians observing, in like manner, Christmas, Good Friday, the Lenten period, etc. Yet neither Roman Catholic nor Episcopalian has ever complained that there is any lack of proper and satisfactory performance of either's public services on such occasions, occasioned by the fact that other people go on with their usual avocations and are not then compelled to be idle by act of the legislature.

The so-called "Evangelicals" of our time — those intellectual children of the New England Brownists, by whatsoever denominational name they may prefer to be styled — those to whose influence the enactments and spasmodic enforcement of every American Sunday law is due — hold public religious services on other days than Sunday. They have Monday night prayer-meetings and Wednesday and Friday night prayer-meetings, and certain among them are addicted to the practice of "holding revivals," during the progress of which they have public religious services several times a day, on every day in the week. Yet as to their week-day prayer-meetings, and their week-day revival meetings, it has never

been hinted that the services, or the results in the way of "conversions" have been in the slightest degree less satisfactory than the services or the results of the meetings held on Sunday. At the week-day prayer-meetings, the average attendance is possibly smaller than at Sunday services; but if the Sunday law is designed to increase the attendance at church, its concern is with the individual whom it compels to be idle, and thus we are forced back to our first head, and get rid of the question of his idleness being necessary to other peoples' public religious services. The "revivals," however, seem to be about as well patronized on week days as on Sundays, though not altogether by the same class of people.

Now all this, going to show that the special police conditions created by a Brownist Sunday law are not in fact necessary, or even of any particular value, so far as regards the proper and satisfactory performance of religious exercises, private or public, might seem to suggest the query, "Then, if no particular advantage in this regard is conferred, how is it that Sunday laws constitute a preference in religion and embody a union of Church and State?" And the answer is, They constitute such a preference and they embody such a union, not because they enable one set of men to show by their conduct that they accept a certain dogma, but because they compel another set of men to conform thereto. The Brownist dogma which they enforce is not, "Thou shalt not interfere with other peoples' devotions on Sunday." There is no dogma on this subject, but there is plenty of law, and the law is at the service of anybody that needs it. The Jew, the Catholic, or the Brownist, may hold public services at any time, and if any one interferes with the same, the police will lock him up.

The right of "peaceably assembling" exists on all days and nights, and needs no Sunday law for its protection. But this right has no relation to the character of the assembly

as religious or otherwise. The law in America has no means of ascertaining its character herein. When this point was mooted respecting a Spiritualist camp-meeting, the court left it to the jury.[1] But this is a mere evasion. An American jury can decide no question of which American law can take no cognizance. The character of a particular assembly as religious or otherwise cannot be legitimately submitted to a jury, unless the court is prepared to instruct them as a matter of law respecting the characteristics which distinguish a religious assembly from all others. It would be a usurpation for an American judge, sitting as a jury, to decide this question as to any particular meeting, because the law which he is sworn to administer gives him no guidance on the subject, affords him no means, *confers upon him no authority*, to decide it. It is neither more nor less of a usurpation for him to render a judgment on a verdict whereby a jury has affected to decide this question respecting any particular meeting, than it would be for him to render such a judgment after sitting himself as a jury on the case. The question being one beyond the purview of American law, and is not to be brought within it by the jury machinery or any other.

The law, then, protects the right "peaceably to assemble" without reference to the object of the assembly; whether it be held in the interests of politics, religion, dress-reform, or anything else, the prohibition of treason, riot, etc., being the one limitation of the right. And reason shows what the experience of Jews, etc., as well as Brownists has demonstrated; namely, that a religious assembly differs not one iota from any other kind of assembly in its need of State protection. The ability to keep abreast with what is going on, and to impress one's views upon others, the exercise of our faculties to the utmost in these directions, requires precisely the same police conditions at a religious assembly that it requires at a caucus, and no other police

[1] Feital *vs.* Middlesex R. R., 109 Mass., 398.

conditions whatever. And the establishment and maintenance of these identical police conditions for all lawful peaceful assemblies of its citizens is the duty and the sole duty of the State with reference to such assemblies. And this duty exists without Sunday laws, on Sunday as well as all other days, and is constantly exercised on Sunday without any reference at all to Sunday-law provisions. The interference with the proper and satisfactory performance of public religious services is "disorderly conduct" on Sunday or at any other time, and the interferer is punishable accordingly. It follows that Sunday laws, in this aspect of them, are, to say the least, superfluous and unnecessary.

It is an accepted maxim of American jurisprudence that the right of government to regulate the conduct of one man is limited strictly to the prevention of his interference with the legal rights of others. So that the unconstitutionality of the statutory requirement of Sunday idleness, if its sole object be to prevent the compulsory idler from interfering with the right of voluntary idlers "peaceably to assemble" for religious or any other purposes,—the unconstitutionality of this requirement is demonstrated when it is proven to be superfluous and unnecessary in this regard. But, now, busying themselves still with the religious aspect of the Sunday laws, and still adhering to our second view, that they are for the benefit of others than the reluctant idler, the courts have gone beyond this plain and irrefutable reasoning, and invented a new ground for sustaining such laws, based on religious considerations. They have found in them a necessary safeguard of certain rights, which they hold to be within the cognizance of the law, and which would be unprotected but for this requirement. And these rights are by no means confined to the circumstances of an assembly, nor even to the actual exercise of family or private devotion. *They belong to the day*, and have no essential connection either with the actual conduct of the voluntary idler, or with any actual objection

he may feel to a temporary break in the compulsory idleness of another. Let us take up these propositions separately.

A man may be neither at church, nor at family prayers, nor yet kneeling in his closet; he may be reading neither the Bible nor any other good book, nor meditating on religious subjects; he may be merely taking a walk and devising a scheme to despoil some "Egyptian" rival in Commerce street on Monday morning,—nevertheless, the Sunday law protects him in "rights intimately associated with the rights of conscience, which are worth preserving,—the right to rear a family with a becoming regard to the institutions of Christianity and without compelling them to witness hourly infractions of one of its fundamental laws;"[1] and accordingly it will prevent him from finding a grocery store open on his walk, because such a thing is "shocking to the community's sense of propriety, and brings into utter contempt the sacred and venerable institution of the Sabbath!"[2]

Now, it is plain that we have here something altogether unique in American law, namely, the assertion of its right to constrain one man to a certain line of conduct without the slightest reference to its physical effect on other people. I "witness" one man working noiselessly in a field, and another standing quietly inside of his own grocery store on Monday, and if I call upon a policeman to arrest either man, upon the ground that the sight of his behavior is offensive to me, I shall be in danger of a jury *de lunatico*. I "witness" the same sights on Sunday, and if I make the same complaint, the men will be arrested and fined. What makes the difference? What is the nature of this "offense" against me, done by this noiseless work or business of another on Sunday, which I may invoke the police-power of the State to punish, and which the doing of these things can by no possibility result in, on any other day in the year? The answer has been given by a North Carolina judge, who truth-

[1] Johnson's Case, 22 Pa., 102. [2] Shover's Case, 10 Ark., 259.

fully says that Sunday work "offends us not so much because it disturbs us in practicing for ourselves the religious duties or enjoying the salutary repose or recreation of that day, as that it is a breach of God's law and a violation of the party's own religious duty."[1]

It has been shown that compulsory Sunday idleness on the part of one portion of the community is not necessary or even of any special advantage, so far as the proper and satisfactory performance of religious exercises, personal, domestic, or public, by the other portion is concerned. It might seem to follow that no preference is necessarily given to the religion of these last by the Sunday law. But the cases just cited answer this point. The preference does not consist in providing for the religious exercises of the voluntary idlers, special conditions which have no connection whatever with the proper and satisfactory performance of those exercises. The Brownists are guilty of intellectual dishonesty in making this claim. Their Sunday law is neither desired nor passed with the slightest reference to religious exercises. It is desired and passed to give a preference to Brownism, and it does in fact give a preference thereto in this regard alone: *It incorporates into the civil law, a dogma of Brownism to the effect that men ought to be idle on Sunday, and by the infliction of civil penalties, it enforces submission to this dogma on those who do not accept it.* And, hence, it enables the Brownist to do what no other religionist can do in this "free" America of ours; namely, to have one whose views of religious duty do not coincide with the Brownist's, punished for acting upon his own views instead of acting on the views of the Brownist, or, in other words, punished for committing "*a breach of his own religious duty*," as the Brownist chooses to define and prescribe the same for him.

It is undeniable that these last cited cases correctly state the spirit and purpose of the Sunday laws, and it is equally

[1] Williams' Case, 4 Tre., 400.

undeniable that not one single person who is interested in the existence and enforcement of these laws, feels the slightest interest in any aspect of them save this alone. It is not because the Brownist would be interfered with or disturbed in any manner whatsoever respecting his religious devotions, or in any other respect imaginable, if there were no Sunday laws, that he is so concerned about such legislation. It is because he knows that they do constitute in intention and in fact a union *pro tanto* of the Brownist Church and the State (and for no other reason whatever) that he contends so hard for the life of these obsolete survivals of the English system.

If we take the other horn of the dilemma, the advocates of Sunday laws are not one particle advantaged. To assume the special police conditions created by those laws, to be essential to the proper and satisfactory preformance of religious exercises, and to have the State create such conditions on a day "observed" with special religious exercises by one set of religionists, while not creating them on the days so observed by other religionists, is plainly to give a preference to one religion over all others. And if one sect may constitutionally demand the creation of these special conditions on any particular day, every sect and every individual, may no less demand them on any other day, or during any portion of any day; so that the outcome is that the traffic and business of the entire community is to be stopped by the police whenever any member or members thereof may feel called upon to preach or to pray.

But the fact is, that, as American law has no means of defining the character of a meeting as religious or otherwise, so it is without the ability to determine the character of any particular exercise, private, domestic, or public, and to say whether it be a religious exercise or not. The dancing Dervish claims that his spinning around on one foot is a religious exercise; and American law cannot contradict him. And as that law is without the means of determining the

character of any particular exercise in this regard, it cannot of course decide what, if any, special police conditions are necessary to its proper and satisfactory performance. If there be any peculiarity about such an exercise, which causes it to require for its proper and satisfactory performance certain police conditions not required for the adequate performance of other lawful exercises, this peculiarity is altogether beyond the cognizance of American law. In other words it cannot determine or punish interference with religious exercises *as such* at all.

And, as with the meeting, so with the exercises, discrimination in favor of those assumedly religious is as unnecessary as it is impossible on the part of the law. It is undoubtedly true that a proper and satisfactory performance of any exercise, bodily or mental, involves two sets of conditions,—those of the environment, and those of the performer's own mental and physical state. But this is no more true of religious exercises than it is true of mental exercises of any other kind. And, in the case of all exercises, the law's concern is necessarily limited to the first set of conditions; namely, those of the environment. Thus, if one feels the need of the exercise of walking, the law will guarantee him the conditions of immunity from assault and robbery, freedom from obstructions on the highways, etc., etc. But it can by no means guarantee him that he will not lose the entire benefit of his walk, by reason of his worry of mind over the conduct of another, on the Sunday of his promenade or at any other time.

Just so with religious exercises. The law will guarantee the citizen that they shall not be interfered with by the conduct of other people any more than other lawful exercises. But while it will protect the privacy of the closet and the hearth against the intrusion of annoying people, it cannot undertake to protect *the mind* of the worshiper against the intrusion of distracting thoughts. The reason for the dis-

tinction, and the absolute necessity for preserving it, are plain enough. The law deals with external things alone. The protection it gives to the citizen is protection against injuries which may be done him through some one of his five senses. The agencies at its command, to ascertain and punish injuries, do not avail beyond this limit.

Now, if religious meetings and religious exercises differ in no regard from other meetings and exercises, so far as their requisite environment is concerned, it follows that they need no Sunday law for their proper and satisfactory performance, unless there is a necessity for them in order to prevent some internal disturbance, some perturbation of the mind apart altogether from any assault on the senses. And this is, in truth, the very necessity and the only necessity that Sunday laws are designed to meet. Well has it been said: Sunday work "offends us not so much because it disturbs in practicing for ourselves the religious duties or enjoying the salutary repose of the day, as that it is in itself a breach of God's law and a violation of the party's own religious duty."[1]

This is the very key-note, the gist and substance of the whole matter. In the mind of the voluntary Sunday idler there is *a distracting thought* that somebody somewhere is not idling like himself. And it is the disturbance thus caused to him, and that disturbance alone, against which he demands the protection of a Sunday law. But, as already said, such a disturbance, whether in religious exercises or in any other, is a mental or spiritual injury, and, as such, it belongs to a class of wrongs beyond the cognizance of the law whether in connection with religious exercises or any other. It is an offense to the emotions or sentiments alone, involving no physical or temporal consideration. The same observation applies to all injuries of a purely mental character — a class, or *genus*, of which we are considering only a species. Very

1 Williams Case, 4 Ire., 400

cruel many such injuries are, involving often more suffering than great physical outrage. They may be done by language, silence, acts or omissions, and work inexpressible misery, yet give no cause of action at law or in equity. Parental affection, wifely love, political faith may be outraged as well as religious sentiment, yet *damna absque injuriis* alone be inflicted.

Take the case of a public political meeting. One might say with reason that a saw-mill running next door to his meeting place prevented him from keeping his mind steadily and profitably on the political instructions or exhortations of his favorite orator. But equity will enjoin the running of the mill for no such reason. The injury is spiritual or mental, and therefore beyond the cognizance of the law. Between the favorite orator and the favorite preacher the law can make no distinction without setting up a union of Church and State. Disorderly intrusion on any meetings may be prevented or punished, not because devotions or politics are interfered with, but because the *meeting* is disturbed. The fact that one of them happens to be a meeting for the purposes of devotion, is altogether immaterial in the eyes of the law, and gives it no claim whatever to any special degree of protection.

Take the case of private meditation or devotion. One might well say that the saw-mill prevented his reading with due appreciation his Homer, or doing himself justice in the production of a poem. The saw-mill may run nevertheless, and he can have no damages for its running. Between Homer and the Bible, the poem and the prayer, the law can make no distinction without setting up at once the union of Church and State.

It has been said that this is a necessary principle, which must be applied irrespective altogether of religion. Its necessity arises from the fact that injuries to the sentiments or emotions merely are of an intangible nature, and vary in

their intensity with the individual disposition of the injured party, to such an extent that no standard of damages can be established for their recompense. What to one person would be a source of mortification and grief for a lifetime, might not affect another in the least. Hence the law, which never attempts impossibilities, and merely represents, however roughly, the general *consensus*, or common sense, of the community, wisely ignores such injuries altogether. Not only will it refuse recovery for them when standing alone, but it will not even allow them to be considered to aggravate or increase the damages recovered for a physical injury. Thus, a mother may compel a railroad company to pay her for the killing of her son. But she is to be recompensed for the loss of his physical services, and the damages are to be computed on this basis alone. The injuries to her feelings, as, for instance, her agony of mind at seeing him mangled by the engine while she stood near, cannot be considered by the jury. Nor could it be shown in order to increase the mother's damages, that she was more affectionate and fonder of her child than the ordinary run of mothers; nor could the damages be diminished by proof that she was cold and heartless in her treatment of her son. Nor, on the other hand, would his affection or want of affection be in the least relevant. The law simply assumes that the mother has an interest in the life of her son which may be computed in cash, having regard to his wage-earning capacity, etc., etc., and compensates her on the same exclusively business principle, so far as she is concerned, upon which life-insurance is conducted.

There is a general agreement about loud noises, bad odors, explosives, etc., etc., as nuisances, because they interfere with physical comfort or safety. And so the law embodies a *consensus* that, for physical reasons, having regard to a change in physical conditions, some things may be branded as nuisances both by civil and criminal law if done

at night, which would not be so if done by day. But in the case of all these things, the standard of damages is the same for all classes of persons. Bad odors are frequently more objectionable to one person than to another; loud noises are distracting to some, matters of indifference to others; the proximity of explosives will alarm many, while a few will laugh at their terror. Of all these varying dispositions, these grades of emotional sensitiveness, the law takes no notice, because, as said, to measure and judge of them is beyond its power.

Applying this principle to injuries to religious emotions or sentiments, we see at once that they are beyond the reach of law. There are Christians whose religious sentiments are shocked by the erection of a Jewish synagogue, and even more so by the building of a church for any other denomination of Christians than their own. But the law has no balm for their wounds. And the want of this general *consensus* respecting religious exercises, even if it were possible for the law to determine what are such, and even if their requirement of special police conditions were conceded, is an all-sufficient reason for the law's declining to give them greater consideration than it gives to exercises of any other sort. At present there are many who say that all religious exercises are a sheer waste of time. There have always been thousands who have considered that unless the exercises are conducted under certain auspices, they are considerably worse than a sheer waste of time. Between these varying opinions the law has neither the jurisdiction, nor the means to decide; and therefore it confines itself to "keeping the peace" at all times, and allowing every citizen to indulge at all times in any sort of exercise not incompatible therewith, and to call it religious or by any other name according to his own will. Now, as already observed, the courts never miss the point in this connection except when they come to deal with Sunday laws. But the principle is just as applicable to

Sunday laws as anywhere else. And its result when applied to these laws is to prove they cannot be sustained as measures for the protection of religious exercises.

But, in truth, the construction judicially given to the Sunday laws when they are sustained on religious grounds, refutes the assumption that they have any necessary connection with the question of religious meetings or private or domestic religious exercises. Of course, if their object were to provide certain police conditions required for such meetings or exercises, the fact that no such meeting was going on in the neighborhood, or was actually interfered with, and that no such exercises on the part of any person were interrupted, would be a conclusive defense for the doing of an act on Sunday which might be done on other days. But the irrelevancy of the question whether meetings or exercises have really been interfered with by Sunday activity, is judicially settled by the view taken of the nature of that right which Sunday laws are held necessary to protect, and of the disturbance against which they are designed to guard.

One of the definitions of "to disturb" given by Webster is, "to agitate the mind," and he adds that the mind is disturbed by envy. This is an excellent illustration for the purpose. A mere emotion may disturb,— no sensation or perception of any kind is necessary. Whatever tends to awaken or kindle that emotion is the producer of a disturbance. The voluntary Sunday idler is thus disturbed by another's Sunday work, though he neither sees nor hears it. It weighs down his mind if he knows that it is going on. This knowledge arouses in him an emotion which, it must be admitted, is inconsistent with his use of the day for religious profit, being ninety per cent pure malice. The disturbance done to him we are told — and rightly told in the last citation — grows out of his conviction that for another person to work on Sunday is "a breach of God's law and a violation of the party's own religious duty."[1]

1 William's Case, 4 Ire., 400.

And it is evident that the disturbance produced by the conviction that a party is guilty of such conduct beyond the reach of the Brownist's sight or hearing is quite as great when he is not engaged in any religious exercises, alone or in company, as when his "services" are actually in progress. Nay, it must be the greater when he is otherwise altogether unoccupied, because then he is able to concentrate his whole energies on the reflection that, at the other end of the town, say, somebody is doing what the Brownist does not think he ought to do on Sunday. And this reflection cannot be otherwise than disquieting to a Brownist, the vital essence of whose mental life is the fixed belief that it is his business to set other people straight, and the feeling that the dignity and authority of Deity itself are insulted and defied by the perverse people who decline to be set straight according to the gospel of the Brownist.

Plainly enough, it is the disturbance *of himself* by this disquieting reflection which the Brownist voluntary idler wants a Sunday law to prevent. But we must not omit to notice an ingenious attempt to establish the position that the real purpose of the law is to prevent the disturbance of the non-Brownist involuntary idler. The words, "to the disturbance of others," are added to the prohibitions of work and labor in some of the statutes. They first appeared in the New Hampshire Sunday law. In construing them, the court adhered rigidly to the religious view of the statute, but adopted an entirely new view of its purpose. It considered that the object of compulsory Sunday idleness was not the spiritual betterment of the reluctant idler, nor the prevention of his interference with voluntary idlers in their religious exercises, nor yet the relief of their minds from the harrowing thought that somebody might be at work somewhere. At least it ignored these aspects of the subject altogether, and enunciated the proposition that the real *protegée* of the Sunday law is one

compulsory idler whom another may "disturb" in his idleness, *even with his perfect acquiescence*!

The court held that it was "safe" to give the word disturbance a "comprehensive meaning;" and that the fact that people willingly submitted to, and took part in, a thing did not make it non-disturbing *to the party himself;* or, in other words, that a man may be disturbed by doing what he wants to do! The court then went on to say that the object of the statute was *to prevent the distracting of people from religious observance*, and that "nothing should be tolerated that tends to defeat it." And on the basis of this construction of the law it set aside a contract to buy a horse, because the vendee was disturbed by the offer, which he willingly discussed; because a witness whom the vendee took with him to the conference was disturbed, though he went along willingly enough; and because the wife of one of the parties was disturbed, as was proven by the fact that while the transaction was in process of consummation, she *sat in the room reading a news-paper!*[1]

And, later, "disturbance" was said to consist in "acts calculated to turn the attention of those who are present, from their appropriate religious duties to matters of merely worldly concern," which evidently makes it a breach of the Sunday law to address a remark to a man on any other than religious topics, such, for example, as the state of the weather, and, accordingly, it was held that executing a will in the presence of others, disturbed them; for, the court said, "if business has been transacted of a secular character, and not within the exceptions, and in which two or more persons have taken a part, the disturbance is a conclusion of law."[1]

But common sense shows us that all this is uncommon nonsense. The question whether a man is "disturbed" or

1 Varney *vs.* French, 19 N. H., 233,

1 George *vs.* George, 47 N. H. 27; see also Thompson *vs.* Williams, 58 La. 248.

not by the conduct of another, is so evidently a matter altogether within the man's own breast that the logical maxim of the law is *volenti non fit injuria*,— that is to say, What a man willingly puts up with, entitles him to no damages at law, gives him no disturbance of which the law can take cognizance. And this logical maxim is always respected and applied by the courts, save in the matter of Sunday laws, wherewith, indeed, logic has nothing whatever to do.

But the Brownist is logical enough when he is intellectually honest with himself. And then he knows full well that when he swears out a warrant against A on the ground that the latter has disturbed B by doing business with him on Sunday, he is seeking to have A punished, not for any disturbance done to B, because in fact there was none; but he is seeking to have A punished because of his knowledge that the business *was done on Sunday*, though he neither saw nor heard anything of it, and did not even know of its being done till long after the Sunday of its doing was over. This it is that "disturbs" the Brownist's soul to that degree that only the fining of A by the magistrate, can restore its equilibrium. And it has been shown that with the matter of soul-equilibrium American law has and can have nothing to do.

This ends our discussion and citations concerning the religious aspect of Sunday laws. It will not fail to strike the candid reader that there is something curious and suspicious about the very mention of religion in connection with the judicial consideration of an American statute. That American judges should be found recognizing the true character of Sunday laws, as civil embodiments of a religious dogma, and sustaining them on that very ground, is only one among many illustrations of Macaulay's remark that "man is such an inconsistent creature that it is impossible to reason from his belief to his conduct, or from any one part of his belief to another."

CHAPTER II.

Objections to the Secular Grounds on which Sunday Laws have been Sustained — The Ground that they are Necessary and Proper for the Physical Benefit of Others than the Compulsory Idler.

WE now pass to the consideration of the second class of cases sustaining Sunday laws; namely, those which hold them constitutional in America on secular grounds, or for reasons disconnected with religion. While some of the later cases cling desperately to the religious view of the statutes, the proportion of such cases diminishes as we come "down the corridors of time." The evidence is plain that an uneasy consciousness that Sunday laws will have to be defended on some other than religious grounds, if they are to be defended at all, is penetrating the Brownist-tainted Bench of these United States more and more deeply every year. And hence the invention of those arguments we are next to examine, which make up what is here called the "secular view" of Sunday laws.

It has been shown that the religious views of these statutes are altogether unsatisfactory, and that no matter how the arguments based upon this view may be turned and twisted, they always end in an utterly indefensible conclusion. What is here called the secular view will be found equally unsound in its logic. But though the religious view is as unsound in its logic as the secular view, it has this great advantage over the latter, — it is intellectually honest, in so far, at least, that it starts out frankly and candidly, by recognizing our Sunday

laws as just what all men know them to be,—religious dogmas incorporated into American statutes. Whereas the secular view starts with utter dishonesty, under a pretense as false as it is audacious, and, being illogical even on its own false basis, is therefore rotten from end to end.

The secular view, like the religious view of Sunday laws is twofold, some cases holding that Sunday idleness is made compulsory because it is of physical benefit to the reluctant idler; others, that it is required for the sake of the community, without reference to this point, the good of the body politic, and not the advantage to the individual bodies of the citizens, being the real object aimed at. But the intellectual dishonesty of either assumption is evident. Everybody knows, as a matter of fact, that Sunday laws have never been passed or enforced with the slightest reference to the sanitary or social aspects of compulsory idleness.

We may make all the allowances we please for the *Zeitgeist* and the human nature of which judges are made, and still we must credit their intelligence at the expense of their sincerity, when we find them ignoring such plain propositions as these. Yet they have boldly ignored them, in order to set up the false pretense that these laws are passed for the secular advantage of the community at large; and the equally false pretense that they are passed for the secular benefit of the reluctant idler.

Let us consider these false pretenses in the order just given. We are told that "the stability of government, the welfare of the subject, and the interests of society, have made it necessary that the day of rest observed by the nation should be uniform, and that its observance should be to some extent compulsory;"[1] also, that "all agree that to the well-being of society, periods of rest are absolutely necessary. To be productive of the required advantage, these periods must recur at stated intervals, so that the mass of which the

[1] Lindenmuller's Case, 33 Barb., 548.

community is composed may enjoy a respite from labor at the same time. They may be established by common consent, or, as is conceded, the legislative power of the State may interfere to enforce the time of their stated return, and enforce obedience to the direction."[1] And again: "If rest is to be enjoined as a matter of public policy at stated intervals, it is obvious that public convenience would be much promoted by the community generally resting on the same day; for otherwise each individual would be much annoyed and hindered in finding that those with whom he had business to transact were resting on the day on which he was working. Sunday is selected as the day of rest because, if any other day had been named, it would have imposed unnecessarily onerous obligations on the community, inasmuch as many of them would have rested on Sunday as a religious duty."[2]

Now, that "like breeds like," is true of nothing more than of absurdities. Something has been said already concerning this much-abused word "rest," which is bandied about so recklessly in the discussion of Sunday laws. Let us observe that the absurdity of assuming that you can compel a man to rest against his will by compelling him to close his place of business, is here coupled with the absurdity that the legislature may indirectly compel him to keep his place of business open against his will, in order that another man may be "saved from annoyances and hindrances." Suppose I have a note to collect at the bank and am "annoyed" and "hindered" to find that my Hebrew banker is resting because it is Saturday. Suppose I have a bill to collect against a Christian and am annoyed and hindered to find that he is resting because his mother has just died. The writer has himself been more than once seriously annoyed as well as hindered by the discovery that others were resting while he was working, in consequence of the

1 Id., 568. 2 B. & O.'s Case, 15 W. Va., 362.

"early closing movement," which has lately shown the characteristics of an epidemic in some localities. And many an industrious man is annoyed and hindered likewise because others persist in resting late in bed while he is up and about betimes.

But whence does an American legislature get its right to prevent such annoyances as these, either directly or indirectly? There can be but one answer,— Nowhere, under any authority whatever, either expressed or implied. There is a real annoyance and hindrance of some by others in connection with Sunday business. But these are not caused by the discovery that others are resting while the discoverers are working, but by the knowledge that the industrious desire to work at a time which the lazy prefer to devote to idling. The only point that needs insistance here, is that the annoyance or hindrance caused to A by B's idling when A feels like working, is one with which, in a free government, the legislature has no concern whatever. Accordingly, if we concede that it is necessary or even so much as advisable to make idleness on one day compulsory, all the demands of the case would still be met by requiring this "observance" of everybody once a week, and naming no particular time for it. The "public convenience" might then be safely left to dictate whatever degree of uniformity was best in the selection of the time of idling.

And this evident truth suggests a reference to the exemption from the requirement of Sunday idleness which is accorded in many States to those who conscientiously or religiously observe some other day,— an exemption which would have been noticed under the "religious" cases but for its utility just here. Of course the acceptance of a conscientious, or religious observance of any other day as a substitute, or "blood-offering," in lieu of Sunday idleness, is an all-sufficient admission that the idleness is required *as a religious duty* of the idler, and is a frank avowal that the Sunday law

which accords such an exemption embodies a religious dogma and represents a union of Church and State. But, apart altogether from this consideration, the exemption also pricks the bubble of the necessity or even expediency of one uniform time of idleness by law established. So that even if the annoyance and hindrance of leaving every one to be idle just when he pleases, would justify legislative interference, provided these were of a sufficiently serious character, yet the very provisions of many Sunday laws show that, in fact, this annoyance and this hindrance are merely part of the petty troubles of life which are beyond the cognizance of law, if for no other reason, upon the principle *de minimis non curat lex.*

The annoyance and hindrance caused to a would-be worker by the discovery that others are resting when he wants them to work, with him, is not sufficient reason for the legislature's making idleness compulsory on all during a certain period. There is more plausibility about the suggestion that the disturbance of the resters by the would-be worker's insisting on doing business with them is a legitimate subject of prevention by statute, from a civil standpoint. It is correct to say, in the language of a West Virginia case,[1] that a citizen's rest should not be disturbed by others, and that such disturbance may be punished by law. Under the police power, the State notices that the rest of its citizens is taken at night, and therefore certain things may well be a nuisance at night which are not so in the daytime.

But what kind of rest is it which the law undertakes to protect? — Plainly, the physical rest, the rest of the body alone. Now it is palpably absurd to maintain that any conditions are necessary for this rest on one day which are not necessary every day. Some men slumber on Sunday afternoons only; others find it expedient to repose awhile every afternoon. If the first has a right to insist on special con-

1 B. & O's. Case, 15 W. Va., 362.

ditions being provided by law for his weekly day-rest, it follows that the second has a right to the same conditions for his daily indulgence. And the business of the community cannot go on till everybody announces that his rest is finished. From such nonsense the law rescues itself by saying to every man, "If you need more physical rest than you get where you are, go to some other place. The occupation of your neighbor will not be interrupted in order that you may enjoy your extra repose."

But it is easy enough to show that with the disturbance of one man's physical rest by another, Sunday laws have nothing whatever to do. We are told, "While I am resting on the Sabbath in obedience to law, it is right and reasonable that my rest should not be disturbed by others. Such a disturbance by others of my rest is in its nature a nuisance, and Sabbath-breaking has been frequently classed with nuisances and punished as such. That these are the objects of our statutes are (*sic*) to my mind clearly shown by the wording."[1]

It is not true, as affirmed in this extract, that "Sabbath-breaking has been frequently classed with nuisances and punished as such." Offenses against Sunday laws have never either here or in England been seriously "classed with nuisances," and no instances can be produced of their "punishment as such by any court of last resort;" and for a very good and all-sufficient reason. It was well said in Tennessee, "It would be a strained and far-fetched construction to hold that violations of the Sabbath *per se* would constitute a nuisance."[2]

It would, indeed. It would be a construction so absurd, so flatly contradictory to the settled principles of law, that no judge will ever dare to make it formally, however much the word may be carelessly employed in the *obiter* of Sunday-law opinions. The erroneous statement just quoted is due

[1] B. & O's Case, 15 W. Va., 362. [2] Link's Case, 12 Lea., 444.

to a mental confusion too common among the laity, but fortunately more common among them than with our judges. A man may be punished for a nuisance committed on Sunday; but then he is punished for committing the nuisance, and not for "Sabbath-breaking." And, in considering what constitutes a nuisance, American law makes no distinction between Sunday and any other day. So, a man may be punished for committing a breach of the peace on Sunday, but this is not "Sabbath-breaking." And, as our courts have no means of distinguishing between the disturbance of a religious meeting and the disturbance of any other kind of meeting, just so they are absolutely without any *data* for discriminating between a breach of the peace on Sunday and a like breach on any other day.

Nuisances, then, and breaches of the peace are punished under the common law, or special statutes, without any reference whatever to "Sabbath-breaking," an altogether distinct thing, and a special and peculiar crime created by the Brownist Sunday laws. They are punished whether committed on Sunday or any other day in any civilized country, though it be one wherein there is not and never was a Brownist Sunday law. They were punished in England before the first Brownist Sunday law was enacted by Parliament. They would continue to be punished in the United States, though every copy after that first Brownist Sunday law was repeated. But nuisances and breaches of the peace are things understood of all men, and apprehended through the physical senses, and their definition in the law is the same for all. We have seen that the only "nuisance" done the Brownist by his knowledge of the Sunday work which he neither sees nor hears, is peculiar to himself and beyond the law's province. And the only disturbance of his rest and the only breach of his peace lie in this same knowledge, and are also without the pale of law.

The following extract will assist us to apprehend the

exact nature of the "rest" which Sunday laws are designed to protect against disturbance: —

"By the common law of the commonwealth, every citizen is entitled to enjoy the first day of the week in undisturbed quiet and repose, that he may exercise his natural and indefeasible right to worship Almighty God according to the dictates of his own conscience, and whatever actual noise or disorder hinders seriously, or destroys altogether, this inalienable right, is and always has been a breach of the peace."[1]

Now the contradiction of this is apparent, as man is certainly not enjoying "undisturbed quiet and repose" who is "exercising his right to worship Almighty God." We here get on entirely new ground. There is no longer a question of disturbing physical rest,—in other words, of disturbing rest in the only real, practical sense of the word, so far as the law is concerned. The Brownist observer of Sunday has voluntarily abandoned his rest. He has not waited to be disturbed at it. He has *deliberately gone to work, and "disturbed" himself.* He is occupied on Sunday, as he is occupied on week days, only after a different fashion, about a different business. We have seen that the Seventh-day Adventists rightly maintain that for Christians to utilize the Sabbath for purposes of physical rest, is quite as much a desecration of it, as for them to spend the day in physical labor. The only point to be repeated just here is that, as a matter of fact, the conscientious Brownist does not spend his Sunday in physical rest at all, and that, therefore, whatever else he may be disturbed in, it is not in physical rest.

[1] Jeondelle's Case, 3 Phila., 509.

CHAPTER III.

The Same Continued — Objections to the Ground that Sunday Laws are Necessary and Proper for the Physical Benefit of the Compulsory Idler.

It is plain, then, that Sunday laws are neither necessary nor designed to protect the physical rest (the only kind of rest within the law's province) of one person from being disturbed by another. It remains to examine the validity of the claim that they are either designed or necessary to compel the individual to remain idle on one day in seven for his own physical benefit. This is a favorite ground of defense for Sunday laws, especially in the later cases.

We are told that "we are so constituted physically that the precise portion of time indicated by the Decalogue must be observed as a day of rest and relaxation: and nature, in the punishment inflicted for a violation of our physical laws, adds her sanction to the positive law promulgated at Sinai;"[1] and so precisely are we constituted in this regard that, whereas, if we fail to loaf away one seventh of our time, we shall be punished by nature, yet "it would be prejudicial to the public and tend to idleness if two sevenths of the time were devoted to rest."[2]

Bearing in mind that "public" here evidently refers to the individual "resters," and not to the body corporate, as an entire thing, and comparing this extract with that immediately preceding, we find a remarkable, physical law judicially established. We may fail to see how the prejudice

1 Lindenmuller's Case 33 Barb. 548. 2 B. & O.'s Case, 15 W. Va., 362.

to the public caused by making Sunday idleness compulsory, differs in kind when two days' idleness in each week is required by law from the prejudice caused when the requirement is confined to one day. It differs in degree, of course, but the first is only the greater of two evils. To rob a man of his right to "labor truly to earn his own living" on one hundred and four days in the year, is worse than to forbid him that privilege for fifty-two days; but it by no means follows that the latter proceeding is good. It would seem that, if one requirement "tends to idleness," the other must necessarily tend in the same direction. But this consideration will be dealt with hereafter.

For the present, it is sufficient to call attention to the scientific accuracy of the "law of nature" as extracted from these two citations. It smack's of mathematical precision, like the law of gravitation, Kepler's law, Dalton's hypothesis, etc., etc. "We *must* idle one day per week, or we cannot (physically) be saved; we *must not* idle more than one day in the week, or we shall (physically) be lost." What more definite, clear-cut enunciation could the most logical mind require? That it is a discovery made by the hygiologists of the Bench, and remains unknown even now to all other experts in physiology and biology, cannot detract from the glory of those who have not only ascertained the fact, but have expressed it so comprehensively, yet with such terseness and lucidity.

The judges who have ascertained and promulgated this wonderful truth of our being, are, it must be admitted, in a minority even among the pundits of the Bench. But, whether from jealousy, or ignorance, many judges have come very near supporting this view, and yet failed to give it full endorsement, or at least to express it as dogmatically and as precisely as it is here laid down.

Most of the cases of the class which we are now considering do not seem to be decided on the principle that one

day's idleness per week is necessary and two days' idleness is deadly. But their claim generally goes merely to this extent — that we shall be stronger, healthier, and longer-lived than otherwise, if we idle once a week. So, we are told that Sunday laws are passed to prevent "servile work, which is exhausting to the body;"[1] and because "the laboring part of the community must feel the institution of a day of rest as peculiarly adapted to invigorate their bodies for fresh exertions of activity."[2]

Here, again, we will concede the facts, in order to examine into their value. Because work is "servile" (the application of this invidious word will also be considered hereafter), and because it is "exhausting to the body," and because idleness is "invigorating," may an American legislature therefore forbid the "serf" to earn his living at any time, and to swallow against his will the tonic of a day's loafing? This is paternalism, suitable enough for Russia where the "elders" of a village were lately flogged on their bare backs because of a deficiency in the town-taxes, and nobody was particularly "disturbed" about it. But it sounds strangely enough as a principle of American law. The freedom of an American citizen to labor when he will, how long he will, at what price he will, is commonly supposed to be part of his inheritance, won by his ancestors back from the feudal tyrants who had stolen it from their ancestors. Into this inheritance he comes when he attains his majority. Its sole limitation is that he shall not, by his labor, interfere with others. Where does an American legislature get its right to step into the place of those robber-barons of the olden time, and filch away the worker's right to judge for himself what is exhausting his body, and *the obligation which may be upon him to exhaust it in labor, "servile" or otherwise?* It has happened (though by no means in every case where the distinction has been claimed

1 Landers *vs.* R. R., 13 Abb. Pr. (N. S.), 338. 2 Wat's Case, 3 S. & R., 48.

for the deceased by too partial friends) that a man has literally "worked himself to death," from his own greed, from the lust of fame, from a sense of duty, for the sake of his loved ones. The question whether or not he is called upon to do this lies between the man and his conscience. The question whether he is actually doing it is for his physician. At what point does the concern of the legislature with such an affair begin?

It lies among the very foundation-stones of our system of law that it never begins at all. The founders of our republic were especially jealous of legislative encroachment. The tendency of the legislative branch of any free government to dominate the other branches, and the fact that under such a system the real danger to individual liberty is in this tendency, and not in the judicial and executive powers, were things well known to Jefferson and his contemporaries. Nor were object lessons wanting. They knew the British theory of Parliamentary omnipotence. They knew the British history of how Parliament had made itself practically omnipotent and supreme over kings and judges by reason of its control of the nation's purse-strings. And while in form their rebellion was against King George, in fact it was caused by the manifestation as against them of the same aggressive, self-exalting, power-monopolizing spirit which had even in their day placed the executive and judiciary departments under the heel of the legislative branch of the English government. Accordingly, when they framed their own governments, the colonists were particularly careful to hedge about the legislative branches with express restrictions of many and various kinds. So, while we find it often said that the governor "may" do this, or the court "shall" do that, "THOU SHALT NOT" is the command invariably addressed to the legislature.

And wisdom is justified of her children herein. The Federal Congress and the State legislatures have fully

equaled the British Parliament in their aggressiveness, not only against the other departments of government, but against the people as well. Congress has at least once shown a determination to have its own way in spite of judicial opposition. The Constitution provides that there shall be a Supreme Court, but it does not name the number of judges who shall constitute the court. Congress once took advantage of this omission to "pack" that tribunal in order to accomplish its ends. The court pronounced an Act of Congress unconstitutional, whereupon Congress increased the number of the judges, a subservient president appointed to the new places lawyers known to hold the opposite view of the act, a new case was made up, and the constitutionality of the act was affirmed in due course. And thus did Congress reverse the Supreme Court and force upon the judicial branch of the government its own view of the extent of its own powers. This procedure is likely to be repeated whenever the Supreme Court seriously interferes with the liberty of Congress to legislate as it pleases.

The sins of the State legislatures in this regard of self-exaltation and conscienceless intrusion upon the domain of governors and courts, as well as oppressive restrictions on individual liberty, would fill many volumes, if detailed. The State Constitutions usually specify the number of the judges and courts, the boundaries of their jurisdictions, etc.; so that the connection between the State judiciary and the legislature is less intimate than that existing between Congress and the federal judiciary system. Yet a powerful and baleful influence is often indirectly brought to bear by legislatures on the courts of a State in order to override constitutional barriers.

Nor have the courts always shown a disposition to resist to the utmost the legislative ambition. It may be said that they are keenest to see and oppose intrusion upon their own domain, less zealous when the executive department is in-

vaded, and least of all concerned where the sole object of the legislature's aggression is a personal right or privilege of the private citizen. It is especially in cases of this latter kind that the courts have largely destroyed their own usefulness as guardians of the people's liberties, by laying down two principles as binding upon them when considering the constitutionality of a statute. The first principle is that an American legislature possesses the omnipotence of the British Parliament, except so far as it has been abridged, expressly or impliedly, by the establishment of the federal or State government. They say that the powers of the judiciary and executive are given, the powers of the legislature are restrained. So that if a judge or governor does a thing, his right to do it must be shown, if questioned. Whereas, if the legislature does a thing, the objector, to establish his case, must show that, somewhere or other, the right to do it is denied.

There is usually no excuse for making any distinction whatever between the legislative and the other branches of government, in this important matter. The analogy of the British system will not hold. The conception, as well as the entire body of constitutional law as we know it in America, is American and not for one whit of it are we indebted to England. The question of the constitutionality of a statute which is constantly arising here, could not arise in that country at all. The British Parliament is a part of the British Constitution. It is not its creature. It has been, indeed, largely its creator. It is its only amender. An unconstitutional act of Parliament is a contradiction in terms according to our law, because we understand by an unconstitutional legislative act one which is absolutely null and void. But the phrase has a meaning for the English lawyer. He understands at once that it applies to any Parliamentary act involving the exercise of a power not before exercised by Parliament, and is thus rather extra-constitutional, than

unconstitutional, corresponding to what we should call a *constitutional amendment.*

But an extra-constitutional act of Parliament is as valid as an act passed in the exercise of functions already recognized as belonging to the Parliamentary body. Thus we see in the British Parliament a depositary of that absolutism which has been deposited nowhere under our system, but has been absolutely withheld. In England the last resort is the Parliament. With us the last arbiter is the people. The nearest approach we have to the omnipotent British Parliament in the way of a representative assembly is the Constitutional Convention. But even the work of the Constitutional Convention must be approved by the people before it can become law.

And as to an American legislature, it has no part or lot whatever in the making of a constitution, though it may ask the people at any time if they will be graciously pleased to amend the same. The legislature is itself the creature of the Constitution. The creature cannot be greater than the Creator. If it derives its very existence from the Constitution, it would seem self-evident that from the Constitution alone it must derive every capacity which it possesses. The law of its being is the only law of its action. And thus we see that there is no foundation for the assumption that an American legislature, as such, is possessed of any degree of Parliamentary omnipotence, or differs in the least from an American judge or executive, in the obligation which rests upon it to show, in the written Constitution, either an expressed or an implied grant of every power which it presumes to exercise.

But it has been said that in nearly every American State, the "common law" of England is expressly adopted, and that legislative omnipotence is a part of that law. In the first place, as already stated, the qualifying words, "so far as applicable," usually follow the assertion of a "right to the

common law." But even without any qualification whatever, the adoption of that law must be taken in connection with other provisions in a "Bill of Rights," and the terms must be interpreted so as to harmonize with the rest, upon the principle of "construction as a whole." We have seen that, where we find in one clause an unqualified adoption of the common law of England and in another a declaration that there shall be no union of Church and State, no Church can be established by law, though the established Church is part of the common law of England.

And so, when we find in almost all the Constitutions an adoption of the common law, standing side by side with a solemn declaration that because the people have enumerated certain rights, they are not therefore to be prejudiced in respect to other rights "retained" by them, we see that the Parliamentary omnipotence of England has no place in a government born of such a Constitution, though Parliamentary omnipotence be the very corner-stone of English common law. And there are other provisions of our Constitutions which are altogether inconsistent with any distinction whatever between the legislature and the other branches of the government, in respect of the obligation to show an authority for its acts. Indeed, among the parts of the common law which we have expressly repudiated, is this very doctrine of legislative superiority. The English Parliament is a court as well as a legislature. But it is the American view that the legislative, judicial, and executive branches of the government ought "to be and remain forever distinct." One House of the British Parliament has for its normal and by far its most important function the sitting as a court of last resort.

But the judiciary's absolute independence of the legislature is no less a fundamental principle with us than its absolute separation therefrom. Here, then, is a very important qualification to be considered in connection with an

adoption of the common law, however general in its terms. And the disregard of this qualification, the surrender of their equal dignity in the face of its express guaranty, which is involved in the recognition of legislative omnipotence, where restraint does not appear, is indeed a most remarkable instance of self-abnegation on the part of our courts. Equality between the two branches absolutely demands that an act of the legislature shall be approached as freely and as impartially by the courts as the act of an individual, and that the mere fact that a statute has been passed by a legislature shall have no more influence upon the decision of its constitutionality, than the mere fact that a thing has been done by a respectable citizen ought to have upon the decision respecting its legality.

Indeed, a moment's consideration shows us that any other rule involves more than a degradation of the judiciary from its proper plane of perfect equality with the legislature. It involves a complete abdication of judicial functions. It makes of the legislature a court of final resort, to solve the doubts with which the judges confess themselves unable to deal, and allows the members of the legislature to be the judges in their own cases, and to take into their hands the law which the courts acknowledge that they are incompetent to administer. If, then, doubtful cases arise, as arise they must, since legislatures, language, and courts are human, surely all this presents a sufficient reason for the court's declining in such cases to be influenced by the view of the one party, the legislature that it has the right to exert a particular constraint on the other party to the dispute, namely, the individual citizen; and justifies the court in solving the doubt for itself, instead of thus referring it to the first party for solution; and surely, in so solving it, the court is bound to solve it in favor of the individual, upon the principle already enunciated that every American government, State and federal, is one of delegated and limited powers.

Again, the view that the legislature may do anything which it is not expressly or impliedly forbidden to do, violates the principles of the law of agency on which the American theory of government is based. American governments did not grow like the government of England. They were made. They are not principals, like Parliament, or even general agents. They are special agents in their entirety, and each branch is a special agent for its specific business. It is a common saying that the federal government is one of delegated powers, while the powers of the State governments are original. There is a peculiar sense in which the powers of the federal government may be called "delegated." It is confined, as other governments are not confined, in its sphere and its operations. But it by no means follows, and it is not in fact true, that the governments of the States are altogether unconfined.

The federal Constitution reserves "to the States or the people" the powers it does not grant. This reservation to "the States" is its peculiar feature herein. But the reservation "to the people" of the powers not by them granted to their State governments is, in some phraseology or other, made in the Constitution of nearly every State of our Union. "Bills of Rights" preface all these instruments. And these uniformly contain a solemn warning to legislatures and judges alike that "the enumeration of rights therein contained shall not be construed to deny other rights retained by the people." This negatives at once the idea that the English theory of Parliamentary omnipotence can be applied in America in reference to the whole government of a State; and it as conclusively forbids the application to the acts of an American legislature, of any other test of legality than the test which is proper alike for the acts of the judiciary and the acts of the executive — the question being properly put, not in the form, "Is authority to do this act anywhere

denied?" but in the form, "Is authority to do this act anywhere expressly or impliedly given?"

Some reliance for the position that the legislature may do anything which it is not forbidden expressly or impliedly to do, has been found in the fact already mentioned, that the provisions regarding the legislature generally consist of restrictions upon its action; whereas, those referring to the other departments of the government usually consist of grants of powers. It is argued that here is an implied recognition of a fundamental difference between the legislature on one side and the executive and judiciary on the other; and of the theory that the last two can claim no authority which is not given, whereas the first may do anything not forbidden. This is specious, but not solid. It is, as has been shown, inconsistent with the spirit of our institutions. And it is also inconsistent with other provisions in our Bills of Rights, and therefore cannot stand under the principle of "construction as a whole."

But, furthermore, no such recognition of the superior dignity of the legislative branch is inferable from the distinctive character of the provisions respecting it. There are good grounds for maintaining that the framing of those provisions in the negative, justifies the Courts rather in a zealous scrutiny of legislative action, than in a disposition to concede its validity. The number, no less than the terms of these inhibitions on the legislature, certainly attest the profound mistrust of such bodies, which permeated the minds of the people.

It has been noted that these inhibitions are mostly concerned with proceedings which Parliament had never undertaken for America, though some of the colonists had doubtless suffered personally, in England from such legislation as is forbidden in "Bills of Rights." But our forefathers knew as well as we know, and appreciated as we do not

appreciate, in this remote time, the story of Parliamentary oppression and tyranny, as practiced for many a year on English soil. And, having this knowledge and appreciation strong upon them, they seem to have all agreed with Jefferson in the conception that their liberties were in no danger from either the executive or the judiciary, under such a system of government as they proposed to construct; so that few express prohibitions were necessary to keep these branches harmless; whereas legislative encroachment not only against the other departments, but against the individual citizen was an ever present peril, needing many and strong safeguards of a specific sort, besides the general reservation of "rights retained" which undoubtedly is mainly designed as a restriction upon the legislature.

The courts, then, if inspired with the true feeling of their masters, the people, will be chary of binding themselves by any assumption which may throw wide the door to the aggressions of the legislative branch, and strictly order their course by the great American principle that government, in totality and every part, is a delegated agent for certain purposes, which to exceed is usurpation.

Closely connected with this fallacious principle of legislative omnipotence, wherever there appears no express or implied restraint, is the equally unfortunate rule that the courts will always hold a statute constitutional in a doubtful case. In fact, the two things are mutually inclusive. The result of either and of both is to *shift the burden of proof* from the legislature to which it belongs, on to the shoulders of the citizen, where it has no business to rest.

Only an attorney can appreciate the full significance of this question of burden of proof, and the tremendous results which follow from laying it on one side of a controversy, whether of law or fact, rather than on another. We have seen that the courts have degraded themselves by their extravagant view of legislative authority. If the self-inflicted indignity hurt the courts alone, the matter would be of less

importance than it is. But the citizen is also concerned. He must be necessarily injured by the surrender of the equality between the branches of his government for which he expressly stipulated when he established it. As already remarked, it involves a weakening of that barrier against legislative aggression which he intended to erect when he provided for a separate and independent judiciary. But, besides this, which is the concern of every citizen, the individual who is denying the constitutionality of any particular statute is specially aggrieved. The State, or rather the legislature, is on one side of a controversy, and he is on the other. The question in whose favor the decision ought to be, must very often be doubtful, since Constitutions, statutes, and judges are things of humanity. What reason can be given for always holding in such case that the statute is constitutional? It is believed to be demonstrable that true Americanism requires us to decide every such case precisely the other way.

"To give the legislature the benefit of the doubt," as the saying is, in such a case, is considered as a "courtesy" due to a branch of the government, co-equal in dignity with the court itself. Now, it may be questioned whether such an individual thing as courtesy can exist or be practiced between two abstractions. A judge may be courteous to a legislator. But it is not easy to see how a court as such can be courteous to a legislature as such. Nor is it quite clear with what moral propriety a question of courtesy can be allowed to affect the discharge of a dry official duty, or why a judge, when called upon to say whether a legislature has violated the law, should deem it consistent with his oath to allow his conclusions to be affected by considerations of courtesy, any more than when he is called upon to decide whether a citizen has violated the law.

But, bating all this, the exercise of courtesy is out of place where the welfare and happiness of other people than the parties are directly at stake. So that, though the courts

should be ever so courteous in allowing the legislature in a doubtful case to usurp judicial functions; and though they should extend this courtesy to legislative attempts to hamper and impede the executive (where the latter would seem to have the better claim, if courtesy is to be consulted at all); and though the courts may thus indirectly deprive the people of the benefit of the most important among the services which the people have established courts to perform, — yet courtesy cannot be legitimately invoked to justify the concession of a doubtful power when its exercise consists in a direct infringement of a personal privilege held by a private citizen.

And the reason is plain enough. With us, it is not the legislature which resembles the Parliament, in that it need show no grant of right to do anything that it chooses. The individual citizen is the inheritor of this absolute authority in free America. He it is that existed before the Constitution and that made the Constitution, which, in turn, gave birth to the legislature. Before he made the Constitution, he could do anything that he pleased, so far as the law was concerned, for the Constitution is the beginning of law. But before the Constitution was made, the legislature could not even exist, and of course could do nothing at all. When the citizen, then, undertakes to do a certain thing, he is not obliged to show a lawful warrant for doing it, in the Constitution or statutes; because he derives neither his existence nor faculties from any such source. The burden is on the disputer of his warrant in doing the thing, to show that the Constitution or some statute has deprived the doer of his *natural right* to act as he did.

This fundamental principle of American law is perfectly understood and consistently applied in our criminal jurisprudence. The advisability, in a civilization largely dominated by feminine sentimentalism, of holding the State to its ancient obligation of establishing "beyond a reasonable

doubt" the guilt of a prisoner, has been seriously questioned. It is argued by some thinkers that substantial justice would be now better subserved, if the decision were made in criminal, as it is in civil cases, according to a mere preponderance of the testimony either way. But, however this may be now, it is certain that in the "iron times" when this principle became fixed in the law, it was rightly considered as a necessary and most efficient safeguard against oppression and outrage. The doubts of old were mostly about the facts. The law was usually clear enough, and, as already indicated, *its constitutionality could not be questioned.* But many American statutes are verbose and cloudy; and the conditions of modern life give rise to cases of great intricacy, so that we have more trouble than our ancestors, both in getting at the facts, and in determining the law's application. But the courts have consistently applied the old rule of the burden of proof to the new doubts thus created. The State must prove its law and the application thereof to the facts after it has first proven the facts themselves. Before it can punish a man for anything that he has done, it must show not only that he did it, but that a law exists forbidding him to do it. The presumption is against his violation of the law, but it is none the less against the infringement by the law of his personal liberty. And among the doubts righteously thrown in a prisoner's favor is every reasonable doubt in the court's mind as to whether the law under which he is arraigned applies to the circumstances of his case.

The same righteous principle obviously requires that whenever there is a question between that creature of the Constitution, the legislature, and that progenitor of Constitution and legislature alike, the individual citizen, the right of the former to interfere with the latter, or to coerce him in any manner shall not be presumed, but every reasonable presumption shall be made the other way; and that the citizen shall

not be required to refer to the Constitution, which is no part of the law of his being, to vindicate his liberty, but the legislature shall be required to refer to the Constitution, which is the entire law of its being, in order to vindicate its right to abridge that liberty.

It may be conceded that the legislature ought to be presumed to believe in the constitutionality of any statute that it passes. Just so, the intent of a private citizen to violate the law is never assumed and must be proven, inferentially or otherwise. But the law is no respecter of persons. The intent necessary to justify the punishment of a citizen must be proven to the same extent and will be inferred from the same circumstances, in the case of one prisoner as in the case of another. And the judges who are sworn to give the people the benefit of the law and its protection against the aggressions of the legislature, no less than against aggressions by one citizen on the rights of another, are not at liberty, in the discharge of that duty, to respect that abstract personage, the legislature, whose actions may come under their purview.

The proper influence of "courtesy" in either case has this extent and no more: Upon the question whether the act itself of an individual is in violation of law, courtesy has no bearing whatever. But where the certain intent essential to constitute the violation of law is not presumed from the act, then courtesy demands that this intent shall not be imputed to legislature or individuals, but must be proven. To go further in either case is to become a respecter of persons. Mr. Smith may be a highly respectable citizen, and Mr. Jones a professional tramp. But the presumption of intent, like the presumption of act, is, in the theory of American law, whatever its practice under the jury system, precisely the same for Smith and Jones. And so the legislature may be, and no doubt in many cases is, a highly respectable body. But this is no reason why its construction of its own

powers should influence the judges upon that subject. To permit it to do so is at once to lay aside the judicial frame of mind and to approach the consideration of a statute with a bias fatal to the administration of strict justice.

This way of throwing on the citizen the burden of satisfying the court that the legislature has wrongfully placed a new restriction on his liberty, instead of compelling the legislature to adduce conclusive proof that it had the authority of law for imposing the restriction, is also inconsistent with reservations of American Constitutions which are clearly intended in the main to restrict legislative aggression, and which may be generally described as *the guarantees of rights of property in one's person and one's things* — the right of the citizen "to be secure in his person and property," the statement that "no person ought to be deprived of his liberty or property without due process of law," and so on. English history shows us the effect designed by those who used such language in the Constitutions of the first States from which it has been copied substantially into those of our later governments. The design was to restrain the legislature from interfering at its discretion with the personal freedom of the citizen, with his use or disposal of his person or his possessions.

The English Parliament had often interfered with these things. In consequence of its action, men had been repeatedly punished without trial and property taken without process. Similar actions are forbidden to American legislatures. And the effect of such provisions as we are now considering is not merely to forbid acts of this kind, but to require the courts to determine whether or not a certain act of the legislature is of the kind, without the slightest reference to the view which the legislature may have taken of the subject, as shown by its passage of the act. For, until the act is passed and has come before the court to be adjudicated, the question of legislative usurpation cannot arise; and the effect of these, or any other constitutional provisions

under which the fact of usurpation is claimed, will be obviously minimized, if not nullified altogether, by holding that the mere fact that the thing was done is presumptive evidence that no usurpation was committed. This digression, though somewhat lengthy, is not out of place in a book whose purpose is to make a general as well as special "plea for individual liberty," and it has a particular reference to the question of the sustainment of Sunday laws on secular grounds. We are now about to see, how, by repeated hammering, though daylight has not been let in, yet in some cases a glimmering doubt has penetrated the judicial mind whether, after all, these laws can be proven to be valid exercises of legislative authority. And, in such cases, they have sought shelter behind the two principles which we have been considering — the "residuum" of omnipotence "inherited" by American legislatures from the English Parliament, and the favorable ruling on constitutionality in a doubtful case.

The influence of these two fallacies is easily enough perceived in Sunday-law cases, as in others, even when they are not mentioned in terms. Thus we are told that the legislature has the power to prohibit work on Sunday, "as a matter pertaining to the civil well-being of the community,"[1] as though the fact that a thing pertains to the civil well-being of the community were an all-sufficient reason for claiming that an American legislature has the power to do it. It is not to be presumed that a legislature will pass a bill which does not, in its judgment, conduce to "the civil well-being of the community." But what are all the constitutional restrictions of the power of American legislatures for, except to limit the judgment of these bodies upon this very point? With many things the people have said in advance that the legislature shall have nothing whatever to do, however closely these things may pertain to the civil well-being. Yet, despite all

1 Melborn *vs.* Eusley, 7 Jones, N. C., 356.

such restrictions, we find it laid down regarding Sunday idleness that whether the power to require it ought to be exercised, depends on the legislature's "sense of the public good,"[1] thus making their sense of the public good the sole and conclusive test of the constitutional authority to act.

As already shown, "courtesy" demands the assumption that the legislature intends its every act for the public good; so that if this intent is conclusive of the act's constitutionality, we are indeed in the condition of England under its Parliament, and there is no power in an American court to restrain the omnipotence of a legislature. But it is plain enough that all such reasoning as this utterly misses the gist of the matter. Of course, before they can pronounce a statute constitutional or unconstitutional, the courts must ascertain its intent — that is, they must determine what the legislature intends to do, before they can decide whether or not the legislature may lawfully do it. But, while the courts must deal with legislative intent, nothing is better settled than that with legislative *motive* the courts will have nothing whatever to do.[2]

The distinction may be well illustrated by the case in hand. The legislature makes idleness on Sunday compulsory. It has been shown that the result is to demoralize and debauch the citizens. But though this end were the real inspiring motive of the legislature, it would not in the slightest degree affect the question of the constitutionality of its action. On the other hand, the legislature may really administer Sunday idleness under the belief that it is a moral and physical prophylactic. But the influence of this motive would constitute no reason for holding that such administration was within its functions. In other words, the courts consider merely *what* the legislature wants to do, and then

1 Sellers *vs.* Dugan 180, 489.

2 See *Ex parte* Mc Cardle, 7 Wal. 506, Doyle *vs.* Continental Sus. Co., 94 Su., S. 535.

whether the thing may be done ; *why* the legislature wants to do any particular thing the courts will never inquire.

In a California report we find it said that "the legislature has the power to repress what is hurtful to the public good, and must *generally* be the exclusive judge of what is or is not hurtful."[1] But, why should the word "generally" be used, when the general power of the legislature to determine such matters has never been denied? General principles of legislative action are dealt with in treatises on abstract law, but they are never mooted in court.

The issue of constitutionality is made not in regard to the legislature's general freedom, or its general obligation to repress what is hurtful to the general good. Its cardinal rule, the controlling and guiding purpose of everything that it does, should be the public good. "The welfare of the people is the highest law" for the legislature. But all this within the limited and prescribed sphere of its lawful actions. It may and should "generally," nay, always, in the discharge of its functions, judge of what is or is not hurtful. And within its sphere, too, it is the "exclusive" judge. Neither the judiciary nor the excutive can decline, the one to sustain, the other to enforce, a legislative act because of its seeming hurtfulness to the public. This is a question of public policy, and the legislature, like the judiciary and the executive, is the sole and exclusive judge of the public policy of its own proceedings. The public policy of compulsory Sunday idleness has already been considered, *but with no reference to the constitutionality* of Sunday laws — their *expediency* being then alone under review.

But, now, while the legislature is always the judge, and always the exclusive judge of the public policy or expediency of its own proceedings, it is never the judge at all, in any American State, *of the constitutionality of those proceedings.* This is a different matter altogether from the other, and is as

[1] Andrew's Case, 18 Cal., 678.

exclusively a matter of the courts as the other is a matter of the legislature.

The question, then, being not the public policy, but the constitutionality of compulsory Sunday idleness, let us briefly examine the last point, without confusing it with the first. One of the strongest arguments against Sunday laws is their inconsistency with those constitutional provisions already alluded to, regarding infringements on what may be called the liberties of person and property. This would be perfectly conclusive if all other arguments were wanting.

It is undeniable that a law which forbids a man to labor for his living at any time that he may feel able and disposed or *in duty bound* to do so, seriously infringes a valuable liberty of person. It is undeniable that a law which compels a man to close his place of business at a certain time seriously infringes a valuable liberty of property. Now, every Sunday law does both of these things. And every Sunday law must, therefore, stand or fall by the test of the legislature's constitutional authority to do them both in the given case.

We have seen that under our American system, the existence of legislative power to make these infringements is not to be presumed but must be proven; and that if the case be doubtful, the benefit of the doubt must be given to the liberties and not to the infringements. Will the assertion of legislative power in the given case stand the test of these principles?

We read: "It is exclusively for the legislature to determine what acts should be prohibited as dangerous to the community;"[1] and that the right to the use of one's premises "must be exercised in such a manner as not to affect prejudicially the tranquillity or morality of the local public."[2]

Here, then, we have the justification for the special legislative infringements on our liberties of person and property known as Sunday laws. My private labor or the sale of my

1 Lindenmuller's Case, 33 Bar., 548. 2 Hagues Case, 20 How., Pr. 76.

goods may be forbidden because it is "dangerous" and disturbs the "tranquillity or morality" of other people. Let us waive the question of morality and concede both these propositions as they stand. Is it conceivable that the same labor can be dangerous on Sunday and safe at any other time? Is not the absurdity of such a notion patent on its face? Again, what sort of "tranquillity" is it that is "affected prejudicially" on Sunday by work and business, and remains all the rest of the week undisturbed by the same labor and business?

The nature of this tranquillity is fully demonstrated in the preceding chapter, where it is shown to be simply the mental tranquillity which is born of the consciousness that other people are behaving, under compulsion of law, as we believe that it is their religious duty to behave. And it is there also shown that this particular kind of tranquillity is not and cannot be brought within the protection of American law.

As to the "morality," it will probably be admitted that if it is really governed by the almanac, so that it is "affected prejudicially" by labor and business on one day and not on another, it is a morality so fluctuating and uncertain in its nature that it is hardly worth preserving. But the idle Sunday does not really belong to the domain of morality. As has been well said, "It is in no just sense a moral sentiment at all which impels us to the observance of Sunday for religious purposes more than any other day. It is but education and habit in the main, certainly. Moral feeling might dictate the devotion of a portion of our time to religious rites and solemnities, but could never indicate any particular time above all others."

We see, then, that neither "danger," "tranquillity" nor "morality" demand or justify legislative infringement of the liberties of person and property by the passage of Sunday

[1] Adams *vs.* Gay, 19 Vt., 358.

laws. The point is made clearer when we consider the general class of legislative powers to which these infringements have been referred. It is said that they are valid under "the police power."[1] This is supposed to be something inherent in every government by virtue of its existence, a necessary attribute of all civil authority, a power born with the State and essential to its being.

The phrase is extra-constitutional altogether. In no American Constitution are any "police powers" conferred by that name either on the government as a whole or any part of it. The phrase is objectionable at all times because it is suggestive of violence, as well as of unlimited possibilities in the way of oppression. Well has Judge Christiancy said, "Powers which can only be justified on this specific (police) ground, and which would otherwise be clearly prohibited by the Constitution, can be such only as are clearly necessary to the safety, comfort, and well-being of society; or so imperatively required by the public necessity as to lead to the rational and satisfactory conclusion that the framers of the Constitution could not, as men of ordinary prudence and foresight, have intended to prohibit their exercise in the particular case, notwithstanding the wording of the prohibition would otherwise include it."[2] And, though the use of this objectionable phrase be unfortunately rooted in our law, yet it is not to be juggled with in order to attribute to an American government any power not expressly or impliedly conferred upon it by the Constitution, the law of its being, nor to deprive the people of the benefit of their solemn declaration that the enumeration of certain of their rights in that Constitution shall not be construed as a surrender of other rights retained by them.

Grant that the "police power" is an essential attribute of every government. The fact remains that with us all governmental powers, like all governmental existence, depend on

1 Frolickstein's Case, 40 Ala. 725. 2 Walker's Case, 9 Mich., 281.

the Constitution and are defined and limited thereby. If the Constitution says that my liberties of person and property shall not be infringed except under certain limitations and with certain formalities, then the government cannot justify its forbidden infringement of those liberties by invoking this specter of the police power, as a mysterious entity outside of, and above, the Constitution—a source of authority higher than the people, and which has invested their servants with powers over them, which the people never bestowed, and which are pregnant with illimitable mischief. The "police power," in fact, for us, means really nothing more than the power of the government. If the government has a power, it may exercise the same, whatever the power may be styled. But because a power may be rightly called "police," it no more follows that an American government may rightly exercise the power than it follows that such a government may do whatever "public policy" in its judgment requires to be done. The "domiciliary visit" and "administrative process" which are well-recognized exertions of the police power in Russia are not admissible here.

We see, then, that for an American government the claim of "police power" amounts to nothing but the claim of a power, the validity of which must be tested by the Constitution, so that "power" without the adjective is just as good as with it, and the phrase has no real meaning when the constitutionality of any governmental proceeding is in question.

This principle applies as well to each branch of the government as to its entirety. But the phrase "police powers" is especially out of place when applied to legislative acts. We have provided carefully for the separation of the three branches of the government, and have decreed that the functions of each shall, as far as possible, be its own exclusively. Now police powers are essentially executive. "To take care that the laws are faithfully executed"—that duty prescribed for the governor in most constitutions—involves the "po-

lice power." The phrase has no proper connection with the making of laws, which is the business of the legislature. If we substitute "functions" for "powers," we see at once the force of this distinction. And, as the legislature has no police functions to perform, it is evident that it has, properly speaking, no police powers under which it may act.

The "police power" or, better, the power of an American government as a whole, is, then, somehow and somewhat limited. Let us, for the sake of argument, concede the whole phrase "police power," and consider what its limitations may be. First of all, as just indicated, it is subject to any express restrictions on governmental action found in the Constitution. But the general spirit which inspires these restrictions — the whole theory of delegated powers — throws a yet heavier restraint upon government. There are only two ways in which any branch of the government can infringe upon individual liberty, — either arbitrarily, at its caprice, without being called upon to give any reason whatever for its actions, or under fixed rules and principles, to be defined and applied by some other branch through whose decree its infringements may be nullified. When all three branches of the government conspire in the use of the "police power" to oppress the citizen, his only resort is the ballot or revolution. But, normally, each branch acts, as it is designed to act, as a check against the intrusion of the other branches on its own domain, and upon the liberties of the citizen. The governor, with his veto, is frequently an efficient and valuable check on legislative aggression. But our chief reliance in this regard must always be the courts, upon which we are also sometimes forced to depend for protection against executive usurpation as well as legislative.

The courts, then, constitute a tribunal before which the exercise of the police power, so-called, by the legislature or executive must be defended when challenged. Now, what is the test whereby the courts are to determine whether or not a

liberty of person or property has been lawfully infringed, in a challenged case, by either of the other branches of the government under the police power?

It has been said that the limitations of this power are "hard to define." But it is possible that we may discover a touchstone by which we can test the claim of any particular act to constitutional validity hereunder. As already indicated, the law administered by an American government cannot concern itself in any way with religious, spiritual, or mental injuries. And this last word at once suggests a still more important limitation on the "police power"— in fact, the primary and fundamental limitation of all. There must, then, be a secular injury involved in the exercise of a liberty of person or property, to justify its infringement under the police power of an American government. Now, this idea of an injury, from its very nature, requires that some other person than the doer of an act shall be affected by its doing. And this is the only sense in which the word "injury" can be used in American law. Here, then, is the primary and fundamental limitation of the police power with us — that it can infringe a liberty of person or property for one reason alone, namely, that, if the liberty were allowed to one person, a secular injury would result to another.

The maxim, *Sic utere tuo ut alienum non laedas* — "So use what is yours as not to injure another"— defines and exhausts the whole police power of a free American government. Under that power it may deal with actions and inactions so far as they affect the relations of the citizens with each other or with regard to treason, etc., against itself. It cannot go one step beyond these limitations. This is not a matter of theory. It results from the very nature of a free government —from the necessities of the case. A government which undertakes to do more than this — to restrict the liberty of person and property with reference to the individual — at once ceases to be free and becomes paternal and despotic.

The "secular view," then, of Sunday laws is a wrong view: *First*, in that it assumes compulsory idleness to be necessary or even desirable from a secular standpoint, so far as others than the reluctant idler are concerned; *secondly*, in that it assumes that compulsory idleness on Sunday is necessary or even desirable so far as the reluctant idler is concerned; and *thirdly*, in that it assumes that if compulsory idleness on Sunday were necessary or desirable either for others than the reluctant idler, or for the reluctant idler himself, or both, this consideration would justify an American legislature in making idleness on Sunday compulsory.

But this secular view of Sunday laws is not only wrong in these premises and in this conclusion; it is also wrong, it is shamefully, pitifully wrong, in that it is an *afterthought* of the courts, born of an intellectual dishonesty, which can only be held sincere by crediting the heart at the expense of the brains of our judges. For it must be that any judge whose knowledge is not the slave of his zeal for Brownism, is fully aware that not a single Sunday law has ever been passed, and not a single prosecution under a Sunday law has ever been made with the slightest reference to the secular aspect of the subject, or from the slightest regard for the secular advantages of Sunday idleness to the compulsory idler or to anybody else. He knows, what Mr. Tiedeman truthfully says, that the enactment and enforcement of Sunday laws have no other origin and inspiration than "the spirit of New England," which in colonial days "imposed a fine for absence from public worship;" that every such law does, in fact, exist and exist only "because of the religious character of the day;" and that no such law ever has existed or ever will exist "for any economical reason."[1]

Knowing all this perfectly well; knowing that the origin and spirit and purpose and aim of all Sunday laws from the first to the last is simply to prefer the Brownist type of the

[1] See Tiedeman's "Limitations of the Police Power," pp. 175, 176.

Puritan type of the Christian type of religion to all other types, and to force an outward deference to a peculiar dogma of that religion upon those who do not accept the dogma or believe in the religion; knowing perfectly well that this is an unconstitutional purpose for an American legislature to cherish or accomplish, and that is both cherished and accomplished in every Sunday law of these American States,— knowing all these things perfectly well, is it competent for the courts to go beyond them? Is it competent for them to say: "Here is an attempt of the legislature to do what it is expressly forbidden to do; here is a practical success in that attempt; but all this is immaterial, provided that, in the course of accomplishing this illegal purpose, the legislature has indirectly also accomplished something else which it by no means intended, but which it had the power to do directly, had it been so disposed?"

This monstrous position has actually been taken in the course of the desperate judicial efforts to support Sunday laws on secular grounds. Says one judge, "It may be conceded that the acts prohibited are only prohibited because they are such as would be offensive to public morals according to the standard of Christianity"[1] — meaning Brownism; and another, "though it may have been a motive with the lawmakers to prohibit the profanation of a day regarded by them as sacred,— and certainly there are expressions used in the statute that justify this conclusion,— it is not perceived how this fact can vitally affect the question at issue"[2] meaning the constitutionality of a Brownist Sunday law; which in both these cases was sustained, notwithstanding the admissions quoted.

As has been said, this position is monstrous. Judge Cooley rightly observes, "A court or legislature which should allow a change of public sentiment to influence it in giving to a written constitution a construction not warranted by the

[1] Kaser's case, 60 Cal., 177. [2] Specht's case, 8 Pa., 312.

intention of its founders, would be justly charged with reckless disregard of official oath and public duty." Thus, if a statute is passed with a view of giving a forbidden preference to a certain religion, and its enforcement necessarily involves the giving of such preference, the statute is void. That it may incidentally accomplish other purposes legitimately within the purview of the legislature will not save it. To postulate these last as the motives and foundations of its passage when one knows that the postulate is utterly false, is surely a great scandal and reproach to our judiciary. Yet this is just what is done in the class of cases now under consideration. Driven out of the position that these acts are legitimate manifestations of the Christianity inherent in American law, the courts actually fall back upon the proposition that they are measures of hygiene, and *therefore constitutional!*

Now, not only does what Judge Cooley here says about a "written constitution" apply also to a statute, but what he says about a "change of public sentiment" applies with equal force to an awakening of the public consciousness. Sunday laws were first passed in the United States on religious grounds alone. The inspiration of the most recent Sunday laws is the same as that of the first. It is not so much a change of public sentiment, though that is an important, and a daily growing force on the right side, as an *awakening* of the public consciousness to the true character and meaning of these laws, which is forcing on the issue of their repeal. The awakening public consciousness is grasping the fact that Sunday laws are intended to constitute, and do in fact constitute, a preference of one religion over another. The public conscience will soon demand their repeal for this reason. What can we say, then, but that those judges are "justly chargeable with reckless disregard of official oath and public duty," who, in order to check this just demand and preserve these foul blots on American statute books, permit themselves the

subterfuge of pretending that Sunday laws are based on secular grounds, thereby giving them what they know to be "a construction not warranted by the intention" of the makers and supporters of these statutes?

Again, it is not law which any court would dare to lay down except in Sunday cases, that a statute which is passed to accomplish an unconstitutional purpose, and which cannot be enforced without accomplishing that purpose, is to be sustained because, as an incident or accident of its accomplishment, some result is reached which was not contemplated, but which the legislature might have accomplished constitutionally by a different statute.

We have seen in this chapter that if Sunday laws were designed for the hygienic benefit of the reluctant idler, or, being otherwise designed, incidentally accomplished that benefit, neither the design, nor the incidental result would render them constitutional. We have seen that it is historically false that the original Sabbath laws had the slightest reference to hygienic considerations. It remains to show here that the falsehood of this "secular defense" of Sunday laws is quite as apparent from their contents as from their history; so that judges who appeal to this "afterthought" of the "holiday theory," as it is sometimes called, deliberately close their eyes not merely to the history, but to the very language of the statute before them.

It is a fact that, in order to sustain a Sunday law on secular grounds, it is necessary not merely to defy history, old and recent, but also to ignore the very language of the statute itself. Up to this point, barring the occasional mention of "the idle and cheerless Sunday" the Brownist Sunday law has been uniformly spoken of as if it interfered solely with the liberty of labor and business. This has been done from the conscientious desire to give its defenders the advantage of the strongest position which their case can occupy. It is, naturally enough, a favorite position with them. Whatever

fallacies may be urged on behalf of a Sunday law with any degree of plausibility, can be urged from this position alone. Indefensible as it is, when assailed by common sense, this position may at least be occupied and held until fired on. But there is another position which no intelligent Brownist has ventured to take for many a day, upon this subject, and yet which must necessarily be taken and defended if Sunday laws are to be justified. Everything alleged concerning the secular advantage resulting from interference by these laws with the liberties of labor and business might be conceded, and it might further be conceded that this secular advantage was an all-sufficient reason for their enactment by an American legislature ; and yet the rightful presence of a Sunday law upon an American statute book would remain as far as ever from being established.

The interference with the liberties of labor and business is only one half, and perhaps the least objectionable half of a Brownist Sunday law. Every Brownist Sunday law interferes with the liberty of *play* also. This double interference is essential to the very nature of a Brownist Sunday law. And *unless a statute at one and the same time prohibits work and play, then, whatever else it may be, it is not a Brownist Sunday law at all.* And the Brownist Sunday law with this combined prohibition is the only Sunday law with which we in the United States are concerned.

It is worth noting, in this connection, that the very first Brownist Sunday law passed in England (1623) said not a word about work, but proclaimed that "the holy keeping of the Lord's day" was "profaned" by people going to "bear-baiting, bull-baiting, interludes, common plays, and other unlawful *exercises and practices*," and with such play, not work, it proceeded to interfere. The next thing aimed at was "traveling." And it was not till nine years after the first Act that "worldly work" was forbidden to be done, "without reasonable cause," a liberal saving enough for the

times. And a century and a half elapsed after the passage of the first Brownist Sunday law before any work of one's "ordinary calling," with the famous savings of "necessity and charity," was forbidden on Sunday.

The combined prohibition of work and play, then, is found in all of our American Sunday laws; and this last characteristic of their Sunday laws intelligent Brownists fight very shy of discussing. They prate at length of the "heat of business competition," the "poor, overworked laborer," "the need of rest," and all that sort of thing, when they know that the very contents of their Sunday laws conclusively refute the idea that they are passed to mitigate any such conditions as these; when they know that if the legislature was exercising the paternal function which the passage of such laws involves, for the physical benefit of its children, the adult citizens, it would extend its paternalism from the prohibition of work to the utmost possible encouragement of play; for that play is a far better antidote to the corrosive effects of work than mere idling, euphoniously called "rest," is an axiom of physiology.

Hence, if there were any truth in the idea that Sunday laws are passed and enforced on secular grounds, then a Sunday law enacted by a legislature composed of sensible men — and what American legislature was ever otherwise composed? — would not have its prohibitions of work combined with prohibitions of play, but rather supplemented by provisions designed to make play on Sunday specially easy and attractive — such, for instance, as requirements that all public institutions, libraries, and museums, and the like should be open all day; that all theaters should give matinee performances at half price; that railroads and steamboats should run excursions at reduced rates, and so on. What candid Brownist will not admit that in such a law, a true "secular Sunday" law, he would find heresy, blasphemy, diabolism pure and simple, a surrender of the State to the powers of

darkness, a thing to be detested and fought against in season and out of season?

And not only is it true that this combined prohibition of work and play conclusively refutes the suggestion that Sunday laws are based on ideas of secular benefit to reluctant idlers; but there is strong ground for the belief that, if the advocates of such laws had to part with either of these prohibitions, they would prefer to have the prohibition of work repealed rather than the prohibition of play. The fact that play and not work was the first thing legislated against by their intellectual ancestors points strongly to this conclusion.

And there is another purpose, not equally important with the flattery administered to the Brownist egotism by the State's "recognition" of his religion, but still an essential element of his interest in Sunday laws. This secondary, yet vital purpose is, by depriving people of other occupation, to indirectly drive them into church as the only refuge from the unendurable *ennui* of "rest." And it naturally occurs to the astute Brownist that to allow play and prohibit work, would probably tend less to drive people into church than to allow work and prohibit play.

And, again, the egotism of the Brownist, which it is the main object of the Sunday laws to flatter, requires that people shall be compelled to follow his way as far as possible, on his weekly Sabbath. They cannot now be directly compelled to follow his way of going several times to Church — and to *his* church, as he would have them compelled to do if he could, and did compel them to as long as he could in New England. But he hates play, being naturally gloomy, morose, and sour of disposition, as all true Brownists must be. And his way on Sunday, whether in church or outside, is to be more of a Brownist than on other days — that is to say, to be more averse to play, and more gloomy, morose, and sour. Now the mere compulsory abstention from play on Sunday, while it equals the compulsory abstaining from work, as a

tribute to the superior excellence of the Brownist religion, is unquestionably better adapted than is the abstaining from work to throw others into the gloomy, morose, and sour condition of mind, which is the characteristic Brownist condition.

Thus, in a Brownist-dominated town, when a stranger takes his walk through the streets on Sunday, he finds it not always easy to discriminate between the voluntary Brownist idler and the involuntary non-Brownist idler — the scowl of the first, worn as a religious rite or observance being closely imitated by the frown of the second, worn by way of protest, not so much against Brownist interference with his liberty of work, as against Brownist interference with his liberty of play. So the superficial Brownists, at least, are made by this last interference out of the reluctant idlers. And to cleanse the outside of the platter, while preserving a stolid indifference to the condition of the inside, is as much a characteristic tendency of modern Brownism as it was of the Pharisees and Sadducees of old.

And, finally, this prohibiton of play embodies more of the spirit of persecution which is the life of all Sunday laws and another essential characteristic of Brownism than the prohibition of work. The Brownist's idea of his mission on earth is that he was born to set other people straight and keep them so — that is, to compel them to go his way. If they will not go his way, his first idea is to kill them, if he can, as the Brownists of New England massacred the Indians. When the public opinon of non-Brownists among whom he lives becomes so strong that this pleasant duty is denied him, he unwillingly falls back on mutilation, such as the Brownists of New England inflicted on the Quaker men and women. When even mutilation has been made impossible, then he can do no better than try to content himself with *making life as uncomfortable as possible* for the wretches whom he cannot "get at" in any other way. And this is the Brownist

spirit of persecution that survives in our Sunday laws, and this is the spirit which is more pleasantly pandered to by forbidding play than by forbidding work.

The wretch who will not go to church on Sunday might conceivably be made uncomfortable by requiring him to do extra work on that day; but a certain amount of inconvenience by way of punishment for his contumacy can undoubtedly be inflicted on him by forbidding him to do any work, however much he may need the money he might earn for himself or others dependent on him — in fact, the greater his need, the greater his punishment. But that he shall be sentenced to spend twenty-four hours in every week in moping and misery, in self-tormenting thoughts, and uncongenial idleness, — in a confinement of soul and body worse than that of any jail, — this pleasant result of his non-Brownism can only be reached by that exquisitely and perfectly diabolical Brownist device — the combined prohibition of work and play contained in our American Sunday laws.

And, whether the Brownist most values the prohibition of play or the prohibition of work in his Sunday law, the first must evidently be retained as long as the second is retained, since to forbid the non-Brownist wretch to work and at the same time permit him to play, would utterly defeat the persecuting purpose of Sunday laws, and, so far from rendering him as uncomfortable as possible by way of penalty for his non-Brownism, might even result in his becoming more comfortable on Sunday than on other days, and actually looking forward to its recurrence with pleasure, as an occasion when he would have an extra degree of liberty and be able to enjoy himself after the fashion most agreeable to himself.

CHAPTER IV.

Objections to the Ground that Sunday Laws are Passed "to the General Interests of Morality."

WE now approach the consideration of a class of cases which form a sort of connecting link between the two classes just mentioned, as well as a connecting link between the two sub-divisions of those classes, respectively. The cases of this last class sustain Sunday laws as legislation in the interest of "morality." This allies them closely with the cases which sustain these laws as legislation in the interests of religion,—more closely, as will presently appear, in the minds of the judges who occupy this "moral" ground than right-thinking justifies. It also allies them closely with cases that sustain Sunday laws, as legislation in the interest of idleness, because morality is intimately connected with secular behavior. And these cases form a connecting link between the two sub-divisions of the classes just considered, because they regard Sunday laws as designed primarily for the benefit of the compulsory idler, and through him for the benefit of the community at large; the idea being that the standard of morality is higher or lower in a community according as compulsory idleness on Sunday is more or less strictly enforced.

A fundamental objection to Sunday laws has been found in the essential immorality of their spirit and effect. But the plan of this work demands that we shall not be content with establishing positions of our own, but shall attack and demolish, if it may be, every position occupied by our adversaries. And to this end it is necessary that a few words should be

added here to what has already been said about the moral aspect of Sunday laws.

The cases which rest Sunday laws on the moral basis are abundant, but, as heretofore, only a few will be cited. We are told in New York that the law considers "violation" of the first day of the week as immoral;[1] and the Pennsylvania Sunday law has been sustained on the ground that "the suppression of vice and immorality are State objects;"[2] and in Alabama the object of the law is "to prevent vice and immorality;"[3] and so forth and so on.

Now this word "morality" is a much abused word. We have, for instance, a very entertaining book by Marmontel, called "*Coutes Moraux*," which means "Tales of Manners," but this is rendered in the English translation "Moral Tales," an absurd title in connection with some portions of the contents. "Morality" is derived from *mores*, and *mores* does mean manners or customs; and these are just the very matters with which American law is concerned. But morality has come to have with us a double sense,—an internal and an external sense.

In the first sense it applies to our conduct in relation to Deity; it means obedience to divine law, which American courts can neither ascertain nor enforce. This internal morality is the business of religion—the domain of the Church, into which the State has no more right to intrude than has the Church the right to meddle with the external morality or manners of the people by use of the State's police.

For the sake of clear thinking, we ought to confine the word "morals" to its internal application. But, etymologically, as has been said, it comes within the purview of the State, and it is subject to its police power. The police power deals with the manners of the people and with these

1 Ruggle's Case, 8 Johns, 290.
2 Omit's Case, 9 Harris, 426.
3 Hooper *vs.* Edwards, 18 Ala., 280.

alone. But manners or behavior presuppose intercourse with others; and this brings us back to our principle that it is only with the effect of our actions on others that the power has to do. Thus, to take other illustrations, the police power may compel me to be vaccinated, not because I would be more likely to catch the smallpox if unvaccinated, nor because if I caught it, I would probably die, but, because, unvaccinated, I am liable to become a source of contagion to other people. But the police power could not compel me to have a limb amputated because the bone was decayed; nor to wear a truss for rupture; nor to diet myself for dyspepsia; nor to exercise at stated intervals; *nor to rest;* though any or all of these be most excellent things for me to do. And this brings us to a brief consideration of one of the most singular pleas that has ever been made on behalf of the Sunday laws.

It being contended in a New York case that such a law was passed in excess of legislative powers, and that the question of excess *vel non* was cognizable by the court, the latter abdicated its jurisdiction over the matter in these words: "It is exclusively for the legislature to determine what acts should be prohibited as dangerous to the community. The laws of every civilized State embrace a long list of offenses, *mala prohibita*, as distinguished from those which are *mala in se*. If the argument in behalf of the plaintiff in error is sound, I see no way of saving the class of *mala prohibita*."[1]

Now, the best thinkers have long since abandoned the distinction between *mala in se* and *mala prohibita*, which itself belongs to the union of Church and State, the *mala in se* being things which were considered as forbidden by Deity, the *mala prohibita*, things which man prohibits "out of his own head." That this is the true distinction is plain enough from the language of Blackstone[2] and other writers to date.

Thus, if we look into Judge Sharswood's edition of Blackstone, we shall find a long note on the original writer's ex-

1 Lindenmuller's Case, 33 Barb., 548. 2 Id., 54 seq.

planation of the difference between *mala prohibita and mala in se*, quoted from Judge Christian's edition. Judge Christian tangles himself up in an amusing effort to prove that there is a moral obligation to obey a law against stealing, which does not exist in regard to a "game-law." And Judge Sharswood gravely attacks the "morality" of this reasoning, while no less gravely asserting that its soundness as a legal principle, "though it once had sway in the courts, has been since repudiated." In Judge Sharswood's opinion, there is a moral obligation to obey *every* law of the community in which one lives.

Mr. Justice Blackstone wrote in an age in which heresy, and non-conformity, etc., were punishable as crimes, and in a country where the Established Church is one of the foundation-stones of the Constitution. It was, therefore, proper enough for him to distinguish in a legal treatise between the *mala in se*, the "immoral" things, contrary to the "law of Deity," which the civil law of his country also punished under its "divine right" to govern; and the *mala prohibita*, or things which were not penal under the law of Deity, and were punished by the law of his country without any reference to its mission as the upholder of the Almighty's authority, and the avenger of his affronted dignity.

Perhaps Judge Christian would have been further from his *Zeitgeist* than we have any right to expect a judge to be, had he seen that, along with the established Church and such crimes as heresy, the distinction between *mala prohibita* and *mala in se* vanished from American law at the Revolution. But Judge Sharswood might surely have been expected to tell us that our law has nothing whatever to do with moral obligations, has no means of defining them, no standard for measuring them; that whether a man's conscience ought to constrain him to obey any or all laws, is altogether between the man and his conscience, and therefore any discussion of this purely moral question is utterly out of place in an American law book, as far removed from the proper sphere

of such a work as the consideration of the Darwinian hypothesis; that the existence or non-existence of this moral obligation, being "a legal principle" in no sense whatever, could neither be affirmed nor "repudiated," by American courts under any conceivable combination of circumstances,— it being as completely beyond their cognizance or adjudication as the obligation to go to confession once a year or give "tithes" of all we possess, to the church, or to make a pilgrimage to Mecca; in one word, that American law has nothing whatever to do with morality or immorality, but deals with *civility and incivility* alone.

These two things are often confounded. But to confound them is to destroy the possibility of clear thinking. The classification of Blackstone, followed by the State codes, helps to the false conception. Sunday laws and the like are distinguished from other laws as being directed against "vice and immorality," that being the canting substitute of modern Brownism for Blackstone's frank phrase, "offenses against God and religion." And the cases follow the codes. And thus we find this fatal confusion of ideas, this fallacious conception of the true function and domain of American law, rooted strongly in our jurisprudence. But the fact remains that this law of ours does not distinguish, and has no means whereby to distinguish, between things as *bona* and as *mala, in se.* Its sole distinction is, and must forever of necessity remain, between things which are *prohibita*, and things which are *non prohibita. Mala in se* sometimes loosely applied to things prohibited by the common law, as distinguished from things prohibited by statute. But the phrase is wholly unnecessary, and, as it suggests a jurisdiction over morals possessed by no American tribunal, it ought to be discarded altogether.

Where the common law has been adopted in any State, whatever is forbidden by that law is *prohibitum*, just as whatever is forbidden by a State statute is so; that which is for-

bidden by neither, however, *malum in se* is beyond the purview of our courts. The class of *mala prohibita*, then, while its first name should be dropped, as irrelevant and suggesting a fallacy, is not only to be "saved," but it is to be proclaimed the only class of things with which the law has any concern whatever.

As already remarked in adopting the common law, the State Constitutions usually add some qualifying expression, e. g., "as far as applicable," "as may be adapted," etc. Where these words occur in a constitution, and it is claimed that something is *prohibitum* by the common law, besides settling this point, the court must go a step further and decide whether the prohibition is part of the common law, as adopted by the Constitution. Where it is claimed that something is *prohibitum* under a statute, the court must decide the validity of this claim by reference to the statute. And, finally, when a citizen is arraigned for the doing of a thing which is *prohibitum* by statute, and alleges in his defense that the passage of the statute is a thing *prohibitum* to the legislature, the courts must look into the Constitution, and fearlessly and without prejudice pronounce according thereto.

CHAPTER V.

The Objection that Sunday Laws are Unequal in their Enforcement, and are Class-Legislation.

To prohibit every kind or phase of activity, even of the body, upon the first day of the week would evidently involve the keeping of the entire population in a condition of dreamless sleep during the "sacred hours." For, if allowed to dream, some of them would inevitably toss about. And it is in vain to hope that the mass of the American people will ever be induced by the most stringent Sunday law to adopt for fifty-two days in the year the peculiar form of religious devotion attributed to certain Oriental "fakirs," which consists in assuming an uncomfortable position, and maintaining it indefinitely, awake, yet entirely oblivious to external things, and motionless in every muscle. In order to save themselves, then, from the obligation of including the administration of narcotics to the entire population every Saturday night among the "police powers" of the State, the enactors of Sunday laws are forced to put a "saving clause" into these statutes. This saving clause not only fatally betrays the true character and purpose of all Sunday laws, but introduces into them an element of uncertainty, which it is safe to say would cause them to be nullified by the courts if they were anything else but Sunday laws. The standard saving clause of Sunday laws is "works of necessity and charity excepted." Such works as these, then, are allowed on Sunday when other works are not. Why?

If Sunday laws are designed to prevent interference with the civil rights of some persons by others, how come either

of the exceptions to be made? It is evident that a work might be charitable in the strictest sense of the word so far as A is concerned, and necessary, from his standpoint, to be done for him by B, and yet infringe some civil right of C's. In such a case, where anything but a Sunday law is concerned, the law rightly and consistently declines to admit the charity of B or the necessity of A as any excuse for the violation of C's legal rights. Though I find a tramp starving, I may not rob a store to feed him. On the other hand, if Sunday laws have a civil purpose respecting the individual, and are designed to prevent his exhausting himself by continuous labor, why should he be permitted to do works of charity any more than any other work on Sunday? Is it not obvious that he may be quite as readily exhausted by such works as by work of any other kind? As a matter of fact, all persons who engage in what are called charitable works testify to their exhausting effects upon the physical strength, whatever spiritual benefit they may involve. These savings, then, of the Sunday laws, thus considered, sufficiently refute the suggestion that any civil right is intended to be or is in fact protected by them. But the saving of works of charity does more than this. It betrays frankly the true nature and purpose of all Sunday legislation. The question of charity is a question of religion altogether. The civil law has and can have no concern with the matter. The civil law says, "You shall not stretch out your hand to smite your brother;" religion says, "You must stretch out your hand to help your brother." The civil law has no means of determining what is or is not charity or of enforcing any obligations thereof. It cannot possibly discriminate between works of charity and works of any other sort. In forcing this discrimination upon the courts, by means of the saving of works of charity from the penalties of the Sunday law, the American legislatures have simply forced the courts to deal with a question of religious faith and dogma. Hence it is said: "The means which long-

established and common usage of religious congregations show to be reasonably necessary to advance the cause of religion may be deemed works of charity."[1]

But not only are the courts thus forced to examine into a question of religion pure and simple — they are launched on a shoreless sea of uncertainty without compass or rudder by this saving of works of charity. They are no more competent to deal with the religious question of what is or is not a work of charity than with any other point of religious doctrine. The uncertainty thus injected into the law is well illustrated by the preceding case.

This held that a contract of subscription towards the erection of a church was valid as an act of charity. If so, on what ground is the actual building of the church on Sunday unlawful? Or the quarrying of the stone for its walls, or the dressing of timber for its interior? In a word, where are we to stop in the degree of closeness of connection between the act in question and "the advancement of the cause of religion?" It does not seem possible that the subtlest judicial ingenuity will succeed any better in the future than it has in the past, in affording a satisfactory answer to this question.

Again, it seems hardly consistent with the facts of the case or with verbal accuracy to make charity synonymous with religion. All charity is a matter of religion, but all religion is surely not a matter of charity. Religion concerns itself with man's relation to Deity, first of all, and, as a necessary part of that relation, with his duty to his fellow-man. It is only in this latter connection that it comes to embrace charity. Belief, and devotion, public or private, are no part of charity. And while the duty of charity is a religious duty, its performance is not necessarily concerned with the advancement of religion in the sense of the propagation of religious belief or the support of churches, etc. The fact seems to be that the framers of Sunday laws did not regard these things as work at all; and when they made their excep-

1 Dale *vs* Knapp, 98 Pa., 389.

tion of works of charity, they had in mind the relief of physical pain, the assisting of people in trouble, the doing of kindly, friendly acts, etc., etc. But surely this would throw down many bars which the advocates of Sunday laws are earnest to keep up. It would not merely allow, but include among the duties of Sunday charity, every practicable provision for the decent and orderly entertainment of the poor on Sunday, such as the opening of free libraries, museums, and the like, the running of free excursions, etc. There are many good people who feel that they are doing an act of charity when they combine to send a lot of poor children to the country for a week day, while nothing would induce them to have any part or lot in such a trip if it were made on Sunday. Again, the question might readily arise, Whose charity is it that excuses work under the Sunday law? Assuming that it is a charity in me to charter a steamer and take down the river a number of poor families on Sunday, will that fact be a defense for the captain and the engineer of the vessel, who work for pay as on other days?

Could the company recover the money I had agreed to pay if the agreement was made on Sunday? These considerations are adduced with the view of enforcing the proposition that the saving of works of charity in the Sunday laws introduces an element of uncertainty as to their meaning and application which renders their fair and uniform enforcement according to any fixed standard of interpretation impracticable, and would cause the courts to declare any other than a Sunday law absolutely void on account of the impossibility of construing its provisions by the light of any determinate principles known to the law.

But if an impenetrable cloud is cast over the force and application of the Sunday law by the presence of this word "charity," on what a bottomless, trackless sea are we launched by the use of that other word "necessity!" The tossings and flounderings, the hopeless "seeking after a sign," the

vain beating toward a harbor which does not exist, which we find in the cases on this subject are really painful to a sensitive mind.

We are even without a captain or a pilot whose authority to direct us on the way is undisputed. Who is to decide this question of necessity *vel non* in any given case? — the judge or the jury? If the jury, is it to announce its conclusion with or without previous instruction by the court? You shall find in the reports decisions either way.[1] But assuming that we have settled this preliminary matter, who is to tell us what is or is not necessity, we come next to the question how is he or are they to go about framing the definition for us and applying it to the differing states of fact? As in the case of charity, the first point to be settled is, Whose necessity is meant, — that of the one who does the work or that of the one for whom it is done? Nobody can tell. We are apt to think of a doctor's work as necessary every day. But doctors know that they pay many visits on Sundays, as well as other days, which are wholly unnecessary, so far as the patients are concerned. Will the fact that the fee for such a visit is a necessity to the doctor's comfort, exonerate him? Granting that it is not necessary for men to buy cigars, will it avail to plead that the seller cannot make a living without selling on Sunday? It is not necessary that the public should have the works of any writer; but suppose a man who writes for a living should find it impossible — with due regard for the real "rest" of nightly sleep — to get through his week's work without doing some of it on Sunday, is that a necessity within the meaning of the statute? Is the fact that passengers are going on errands of necessity a defense for the engine

1 The question is one of fact in Indiana, Edgerton's Case, 68 Ind., 588; of law in Vermont, Lyon *vs.* Strong, 1 Vt., 219, and of law and fact in Alabama. Hooper *vs.* Edwards, 25 Ala., 528. Of course, in criminal cases, it is exclusively a question for the jury in those States where the jury is held to be the judge both of the law and the fact, as in Maryland.

driver or the locomotive engineer? It will not do to brush aside such points as these as presenting purely imaginary difficulties, and raising issues never likely to come up for judicial determination. As a matter of fact, just such questions have more than once been involved in Sunday law cases, with the inevitable result of hopeless irreconcilability in the rulings.[1] And, besides, Sunday laws are kept on our statute books by the spirit of persecution which belongs to the union of Church and State. The penalties prescribed in them are rarely exacted except when envy, hatred, malice, the meanest spite and jealousy prompt some Brownist to urge a prosecution. It is therefore important that all possible conditions which might make up a case under these laws, should be thoroughly examined and sifted. It is gratifying, too, to find that from whatever standpoint we approach the Sunday statues, the absurdity and utter unreasonableness of such legislation is equally apparent.

But after we have ascertained who is to decide upon the necessity and whose necessity it is that is to be decided upon, it remains still to settle some rules of principles whereby the nature of the necessity may be defined, and a test furnished for its existence in any given case. And here indeed we are utterly lost, as any one of common sense might presuppose that we should be. It is not within the scope of this work exhaustively to expose the hopeless confusion and irreconcilable contradiction of all the cases wherein the judges have endeavored to attach some reasonable and definite meaning to this word.

It is sufficient for the present purpose to give an idea of the manner in which the problem has been met, and the extent to which it has been solved, by stating that three points

1 In England, a barber is not excused by the fact that his Sunday shaving was a necessity for his customer. Phillips *vs.* Tuness, 4 Cl. & F., 234. But it is said that here the apothecary is justified in selling a medicine which is a necessity to the sick. L. & N. R. R.'s Case, 89 Ind., 291.

have been judicially settled; namely, first, that the necessity of the Sunday law is not synonymous with convenience,[1] secondly, that it need not be absolute.[2] And thirdly, that it must be imperious.[3]

If the law, as thus settled, sounds nonsensical, we must remember, in justice to the courts, that it is rather a difficult matter to talk sense when attempting to construe and apply a statutory provision so nonsensical as this saving of works of necessity in the Sunday law. The only sensible thing that could be said of it, of course, would be to say that it is neither to be understood, explained, or applied, and that it renders the whole law void for uncertainty. But the courts have been so far, as a rule, too much under the influence of the *Zeitgeist* of Brownism to occupy this frank and perfectly unimpeachable position. And it is not to be wondered at that in wrestling with the monstrous task laid upon them by the passage of Sunday laws, in endeavoring to comprehend the incomprehensible, to explain the inexplicable, to apply that which is incapable of application by human intelligence to human affairs,— in a word, to make sense out of nonsense, they should, sometimes with a *naive* unconsciousness, sometimes with a pretty evident suppressed consciousness of what they are doing, heap up more nonsense on the original mass supplied them by the legislature. It needs no argument to show that between absolute and imperious necessity no human intelligence can discriminate; or that if we admit that our necessity is not absolute, then it ceases to have any practical value as an exception whatever, and becomes inextricably confused with convenience. The fact is, of course, that the distinction between a necessity and a convenience is altogether a matter of individual opinion, and can never by any man or set of men be determined for other people. It cannot be said that a man's life is necessary to him. In

1 Allen *vs.* Duffie, 43 Mich., I.
2 Flagg *vs.* Milbury, 4 Cush., 243.
3 Ohmer's case, 34 Mo. App., I, 15.

fact, to many, life is so far from being a necessity that it is an insupportable inconvenience and burden, as witness the suicides.

Getting out of bed on Sunday morning is certainly not a necessity, and, if the Brownists could have their will, there would be far more inconveniences out of it than in it, for other people during the day. Sunday meals are by no means a necessity. Any man can go for twenty-four hours without eating. True, it is convenient for us to take our meals on Sunday just as on other days. But it is expressly said that convenience is not enough. The Brownists have always fought with tooth and nail against the running of public vehicles on Sunday. But if riding be not necessary, certainly walking is equally a matter of mere convenience.

The case is bad enough when we thus deal with men in general. It is much worse when we come to deal with the different classes of society — when we remember that heredity and habit and circumstances may make that an imperious necessity to hundreds which to hundreds more may be a mere superfluity, or perhaps even objectionable. The equality of all men, before the law, that great boast of American freemen, disappears at once. The law becomes a respecter of persons, like that of Russia or Germany.

There are distinctions of race to be considered. Many an American is satisfied to observe Sunday by taking his whisky out of a jug behind a closet door; but that excellent and most desirable citizen, the industrious German, is deprived of a valued privilege when he is prevented from buying his beer fresh and drinking it at table with his family.

There are distinctions of class; and this inseparable and essential feature of all Sunday laws — that they are class-legislation, discriminating against one portion of the community and in favor of another, and practically setting up for one day in every week a privileged "order" among American citizens — is perhaps the most hateful and despicable of all

their hateful and despicable results. In every case but one to be mentioned presently the discrimination is against the poor man and in favor of the rich one. To stop the horse cars from running does not affect the life of those who can order a carriage whenever they want to ride; but it at once makes a sharp distinction between them and their fellows who are thereby compelled to trudge on foot for miles, or else remain cooped up in their narrow tenements on the only day they have to enjoy the beauties and benefits of the country. It makes little difference to one with a fine house full of works of art and interesting books whether the public libraries and museums, etc., are opened or closed on Sunday. But to shut them on that day converts him into a member of an order in the State, having advantages and opportunities of which others are debarred at the only time that they could possibly avail themselves of them. The writer sincerely believes that this is the real reason why the grinding tyranny and cruelty of Sunday laws has so long been endured by the people, that their oppression falls exclusively on that great toiling, patient, long-suffering, voiceless mass of mankind who have no organ of their grievances, and whose real interests and wants are little consulted even in our model republic. He believes that if a serious attempt were ever made to interfere under these laws with the lives of the wealthy and powerful as the lives of the poor and humble are interfered with from time to time under them, the Sunday-law people would be immediately given their choice between repeal and revolution.

Yet, let the poor be somewhat consoled. If they are at a disadvantage as compared with the rich in the matter of mere comfort, or the enjoyment of life under the Sunday laws, it appears that when it comes to taking care of what they have, they are decidedly a privileged class. A learned judge of Vermont makes the following invaluable contribution to the elucidation of this knotty question of necessity: "The individual condition and necessities of each man may go far to

determine whether it is his duty to labor on Sunday to save property from destruction. The saving of a piece of property to one man might prevent great misery and suffering to himself and family — to another it might be of no consequence." So that, before we can settle whether a man is indictable or not under a Sunday law for extinguishing a fire which he discovers consuming his house, we must ascertain just how "imperiously" necessary it is to him that that particular house should be saved. If he has plenty of insurance on it, it is obvious that no real necessity for saving it exists; if he has plenty of money, and another house to move into at once, then the saving of that particular house is to him a mere matter of convenience, and mere convenience is not pleadable in defense to a charge of using water and buckets and working a pump on Sunday.

This single preference of the poor man over the rich one under the operation of the Sunday laws is, however, judicially established, and that in but a single State. It may be confidently asserted that no legislature in passing such a law has in contemplation the constrainment of any but "the common herd" who are in fact the chief victims of these vicious enactments. The odious character of Sunday laws as class-legislation has been frankly recognized in England. It was said: "The statute does not apply to all persons, but to persons having ordinary callings which they exercise on the Sunday,"[1] — that is to say, "nice people" were not to be bothered by it, but only poor devils who have to work for a living, — and not even professional or "gentlemen" workers, either, but only the "lower classes;" for, asked the court in another case, with justifiable indignation, "can it be contended that an attorney is a tradesman?"[2] And what is here frankly avowed of the English law is true of every Sunday law in the United States, whether such an effect is intended by its supporters or not. Every such law touches the life

1 Begbie *vs.* Levy, 1 Tyrn., 130. 2 King *vs.* Whitmarsh, 7 B. & C., 596.

and abridges the liberty of the poor man while it leaves the rich man to all intents and purposes as free as on any other day.

An examination of the cases will show that the "necessities" with which the courts have been called upon to deal in connection with Sunday laws are not really necessities even in the most liberal acceptation of that term. They are simply conveniences, comforts, part of the richness, largeness, enjoyment of lives that, under the most favorable conditions, are poor and narrow and miserable enough. The cruelty of interfering with the scant opportunity for such things which the toiling masses have, is hard to bring home to those who inflict it, because they are themselves perfectly comfortable on Sunday. There is something shockingly cold-blooded and heartless about this American class legislation, the wanton discomfort it works in the alleys, while leaving the life of the avenues untouched. It may be said of Sunday laws that not one of them has ever been passed from a worthy motive. Of what may be called "general laws" of this character, bigotry and self-righteousness constitute the source, of "special laws" the spirit is that of laziness or cheating. Thus in a Western State lazy barbers got a special act passed making their work illegal on Sunday, because industrious rivals worked on that day, which they desired to spend in loafing, and the competition annoyed them. In Maryland certain ice-men who desired to cheat their employers by getting from the latter seven days' pay for six days' work had an act passed making the delivery of ice on Sunday unlawful. Now, in the heat of the summer, ice comes as near to being a necessity in the stifling by-ways of Baltimore as anything can be. But observe the result of this outrageous law. Rich people, with ample facilities for preserving ice over Sunday, protected themselves easily enough by simply doubling their usual orders on Saturday night. But the poor, having "no place to

keep" more than one small piece, simply go without it, and drink warm water on "the Christian Sabbath."

The Sunday law, then, is one thing for the German and another thing for the American; it is one thing for the rich man and another thing for the poor man; the attempt to apply it in practice destroys of "necessity" that equality before the law which lies at the very foundation of American jurisprudence, and fatally discriminates between "classes" in the community. But how much more forcibly is this effect manifested when we come to the case of individual men. How utterly unequal must any application of the law be, how utterly absurd any attempt to apply it as between one man and another. Men who belong to the same races or "classes" often differ widely in their ideas of what is necessary for them, and individual differences herein are infinite in number. The determination of a judge or jury as to what was or was not necessary in a given case might work in great hardship to one man and affect another not in the slightest — even assuming that a judge or jury could be found capable of dealing with such a question on any rational basis.

PART IV.

SUPPLEMENTARY.

CLERICAL SLUMMING.

SUPPLEMENTARY.

The Distinction between Immorality and between Vice and Crime, with some Observations on Clerical Slumming.

WHILE this work was preparing for the press, it was suggested to the author, by some intelligent supporters of its main thesis, that it might be useful to elucidate at greater length the distinction between morality and civility in relation to government, and also timely as well as germane to the topic, to say a few words about that strange "fad" of the day known as "clerical slumming."

It is a fact that the law has, in more than one instance, undertaken to enter the domain of morals and to control the conduct of the citizens irrespective of its civil aspects. But it is none the less a fact, in the opinion of the best publicists, that it has made a mistake in so doing, and a mistake which should be rigidly confined to its existing manifestations. These manifestations are found in laws which provide for the punishment of acts classified by Blackstone as "Offenses against God and Religion," and in laws which our later codes say are directed against "vice and immorality."

But our Brownist cleric comes back at us with this retort: "Why should you deny me my law against immorality because, as you say, it cannot be enforced? Conceding this to be true, would its acceptance as an argument not involve the reasoning away of all law? You have laws against murder and theft, and numerous other crimes, yet these crimes are constantly committed. Would not your argument require you to urge the repeal of all such laws, on the ground that

they cannot be enforced and ought not, therefore, to exist as laws? Indeed, is there a law on the statute book which would not have to 'go,' if non-enforceability at all times is a conclusive objection to it?" This very line of reasoning has been more than once adopted to break the force of the pretty generally admitted statement that "prohibition does not prohibit."

Its refutation is as follows: 1. The American principle being that that government is best which governs least, we will have in America the fewest possible laws, and no law that is not absolutely necessary. Laws against crimes, as murder and theft, are absolutely necessary in every organized society. But an organized society may exist and flourish without laws against vice. 2. The non-enforceability of a law is unquestionably a misfortune. It is inevitable, however, from the imperfection of human machinery and of human nature itself. But nothing tends to encourage a fatal disrespect for the law as a whole, so grievously as the existence of a statute that cannot be enforced. And this consideration furnishes an all-sufficient reason, apart from the American principle of "least possible government," why we should have the very smallest number of laws that we can get along with, and no law whatever which is not absolutely necessary. 3. The non-enforceability of laws against crime, and the non-enforceability of laws against vice, is alike in kind, because it is an attribute of all law. But there is a difference in degree, and this is what led to the use of the words "reasonably enforceable." And for this difference in degree there are good reasons, now to be elucidated.

Among the most important of these reasons is the difference between the view taken of vice and the view taken of crime by the community at large. There is a general consensus about crimes and a general agreement that they ought to be suppressed. Everybody feels a personal interest in the detection and punishment of a murderer. Everybody

will join in the cry, "Stop, thief!" But there is no such general consensus about vice. The avowed views of people on this subject are, as already intimated, of almost infinite variety. And many confess that they hold two sets of views about it; one, the "exoteric," or that which they keep for public exhibition, and the other, their "esoteric" or private or confidential view, which is more satisfactory to their own mind.

Again, while, as said, every one feels a personal interest in the criminal doings of his locality, no one, except those who make a life-business of setting others straight, really feels that he has any right to meddle with his neighbor's vices, unless some personal relation exists. And even where this does exist, there is, with other than professional reformers, an instinctive appreciation that the meddling of one man with another in this regard is rightfully limited to soft persuasion alone — as was the brotherly way of the Master. An ordinary man will not hesitate for an instant to use force to detain a fleeing murderer, or to protect himself or another from robbery; but he would never think of employing force to restrain a fellow-man from indulging in vices of his predilection. And, as he would not think of employing his own physical force for any such purpose, so his right instinct tells him that he has no business to invoke the force of the State for any such purpose, and that its legitimate application is confined to protecting him against those things, and those things only, against which it allows him on emergency to protect himself or another by the use of his own force.

Prosecutions for vice, then, as distinguished from prosecutions for crime, are weakened by reason of the difference between the view taken of vice and the view taken of crime by the average man. But perhaps a more serious cause of this comparative weakness is the distinction made between vice and crime by those who are charged with the work of criminal administration. Among these officials there is a very

general and strongly settled conviction that prosecutions for vice are futile, if not worse.

Their view is that vice depends on a law of supply and demand practically too strong for human law. Hence we find that police departments everywhere trouble themselves little with the vices of the community, and confine their energies almost exclusively to the repression of crime. Tradition and experience alike have led them to this conclusion, that whereas crime may be practically suppressed, vice may be harried and driven from place to place indefinitely, without its aggregate extent or prevalence being materially affected.

Of course, the Church has here a work to perform in producing such a state of mind among the citizens that the demand for, and consequently the supply of, vice will cease. That she can never fully perform it under the present dispensation we are told by the Master, who has left word that the wheat and the tares must grow together till he comes again. All that she can do is to strive with all her might, and so be found at her post, fighting still, on the day when her victory comes with him.

The view that vice is practically irrepressible by police power, which is a postulate of thought among the controlling spirits of all police departments, is, of course, fully concurred in by their subordinates, down to the rawest patrolman. An officer usually goes upon a new "beat" inhabited by vicious people without the slightest idea that he will be any more efficient than his predecessor in restraining their vicious propensities. And if he makes a spasmodic and despairing effort to distinguish himself by "pulling disorderly houses," he is apt to find his results disheartening, and to have his zeal depreciated by his superiors.

As a mere outcome of police experience in all ages and every place, then, the initiation of prosecutions for vice, the preliminary arrests, etc., are left to private enterprise, and come to be the work of societies and special agents. A

society formed for doing any part of the work which police experience pronounces impossible, for suppressing vice of any kind, whatever its specific name may be, is generically to be known as "A Society-for-Setting-Others-Straight." Now, the substitution of the machinery of a private society for the machinery of the great public society, the State, in a prosecution; the attempt to turn the force of the State against an individual by other means than those regularly in operation for that purpose, and which are presumably employed by the regular officials whenever social expediency demands,—this thing is likely to prejudice a case in the eyes of the average man. He perceives at once that the activity of the professional reformers who constitute the society, is not due to any injury which has been done to them by the vicious act. The same instinct which makes him feel that it is none of his business to forcibly interfere with his neighbor's vices, makes him feel that the professional reformer should not be encouraged in his intermeddling with the vices of other people. He finds, as said, a regularly constituted system of administration, the result of the experience of ages, for the express purpose of originating and conducting prosecutions. He is apt to inquire with a note of sarcasm how this came to be the business of the professional reformer. Sometimes the average man will go so far as to intimate that it would be a good thing for the professional reformer to go home and use a strong mirror and pick out the moral beam from his own eye, before undertaking to remove the moral motes from the eyes of other people. And thus the professional reformer who instigates prosecutions for vice is discredited, and the prosecutions are weakened in advance.

It is evident that cases which have to be "worked up" by private enterprise, without the cordial assistance and even with the strong disfavor of the police department, are likely to be weak and ineffectual in their preparation. The complaint that the special agents, or the detectives of a Society-

for-Setting-Others-Straight are not cordially aided, but are rather condemned by the police in their undertaking, is probably, as a rule, well-founded. It is not to be expected that the police should admit that the private detectives of the society can by any possibility succeed where police machinery has always failed; so that the detective's errand is absurd. And his presence is something of an insult to the department, as a whole, and the individual patrolman whose "beat" he invades, because it suggests a duty unperformed, which is to the police mind an unfair imputation, the thing in question — the suppression of vice — being not possible of performance.

It is true that the private detective of the Society-for-Setting-Others-Straight may, in time, become so expert at his business as to be practically independent of police countenance or help. But, whatever degree of weakness in the preparation may thus in time be eliminated, there remains always, apparently irremediable, an essential weakness of presentation in prosecutions for vice. However skillful and complete the work of securing the evidence, it is detective work; however clear and conclusive the testimony, it is detective testimony. Nor is it any less detective work and testimony because, as sometimes happens (see *post*), it is done out of pure zeal and without compensation.

Witnesses, in respect of their attitude toward a case, may be divided into two classes, — the willing and the unwilling. A case has an essential element of weakness about it which has to depend, in whole or in part, on the testimony of unwilling witnesses. That prosecutions for vice are peculiarly unfortunate in this regard we shall see presently. It is important now to note that they are equally unfortunate, to say the least, in the character and attitude of their willing witnesses. Absolutely the only willing witnesses in prosecutions for vice are detectives. If the professional reformer has done his own detective work and is, therefore, a witness in the

case, as well as an instigator of the prosecution, his character as a generally well-behaved citizen is almost merged and lost in his character as a busy-body, and in his character of voluntary detective.

The judgment of the average man is against detective evidence. While it is generally conceded that the detective business is necessary for the suppresion of crime, the detective as a witness is by equally general impulse, mistrusted. It is considered that his occupation tends to harden him to deceit. And even the professional detective employed by the State, though he has no special interest in any one class of cases, is naturally zealous to vindicate his own skill and acuteness in every prosecution. How much stronger is the self-interest of the professional reformer when he does his own detective work; and the vindication of his voluntary assumption of that function, unpleasant in the eyes of all men, depends on the result of his activity, on his ability to convict the wretch whom he has run to earth! And this zeal is by no means diminished by the passionate desire for *self-vindication*. Deep in the inmost consciousness of every professional reformer of whose own reform there is any hope, lurks the feeling that his work and testimony as a volunteer detective are viewed with just disfavor by the average man. That he has been about an unworthy business, that he has stooped to dishonorable courses, and that his moral tone and dignity have suffered in the process,—these are the words of his conscience ringing in his ears, however tightly and ingeniously they be stuffed. Nor is he unaware that the temptation to "color" his testimony, is strong upon him, while he is the feebler to resist it for what he has gone through.

All things considered, then, it is not surprising that the professional reformer as a volunteer detective witness should "view unequally" and with distorted vision the facts with which he has to deal, and should magnify this and minimize that, so as to present these facts distortedly and unequally to

others. But the organizers of a Society-for-Setting-Others-Straight do not, as a rule, do their own detective work. They hire others to do it for them. They, themselves, have neither time, capacity, nor, for the most part, to their high credit be it said, the inclination voluntarily to take upon themselves the degrading task of dogging their neighbors' footsteps. So they organize their society, and hold meetings, and make speeches, and get themselves elected presidents, and vice-presidentesses, and international corresponding secretaries of the southwestern branch, and all that sort of thing, and have their names printed in the papers, besides.

And then they raise a fund. The fund is seldom large enough for the "work," which, indeed, grows by what it feeds on, and the new Society-for-Setting-Others-Straight, as a rule, soon joins the great army of regular "looters" of the public treasury. But this is not invariably the case. However, the fund being raised, the principal use of it is to hire "special agents," otherwise detectives, to do the work of the society. The collection of the evidence is the business of these detectives. The only testimony willingly given in prosecutions for vice falls from their lips. Their business and their testimony are certainly rightly viewed with disfavor and distrust by the average man. They are not selected from the law-abiding, conscientious, industrious mass of the people. A certain moral callousness is necessary for what they have to do. They are usually shrewd fellows, with a dislike for work, and a strong inclination for that lying-around-doing-nothing-in-particular, which is rather more characteristic of the average detective when he is "on duty" than when he is off, and which, it must be admitted, is incidental to his success. Moreover, these shrewd and lazy fellows understand well that their bread and butter, so nicely earned by lying around, depends on the satisfaction they give their employers —that is to say, on their ability *to find what they are sent to seek*, and *to convince judges and juries that they have found it.*

Average human nature would not keep a witness strictly impartial and strenuously accurate under such temptation as this. And the human nature of the private detective is below and not above the average, and the terror is stronger upon him than it is upon the average man at the prospect of having to cease lying around and go to sawing wood.

Prosecutions for vice, then, are weak in the character of their willing witnesses. How much weaker and how altogether ineffectual must they become when, as in almost all cases, the State, to make out its case completely, has to rely on the testimony of witnesses who are altogether unwilling either to appear or to testify — whose wrath is aroused by the very summons! In the case of crimes, where the injured party is reluctant to testify, it is the general rule that a *non pros* is entered. The wisdom of this policy may be questionable. But it often has its excuse in the fact that conviction is extremely difficult where the injury has been forgiven. How much more difficult must it be where the chief witness for the State has not been injured at all; where he himself participated more or less directly in the act, and had to be dragged into court, as it were, by the professional reformers; and where he testifies to each detail with the utmost unwillingness, so that often after he is dragged into court, the testimony has to be dragged out of him?

Let us illustrate the difference between a prosecution for crime and a prosecution for vice, using for the latter our old friend, the Sunday law, since we have shown that Blackstone is right in classifying "Sabbath-breaking" (waiving the question of what this may be) as an act of "vice and immorality." A enters the store of B on Saturday, and robs it. He is arrested as he is leaving with his plunder, by a policeman. B is grateful to the officer. No dragging is necessary to get B before the magistrate, the grand jury or the criminal court. His "personal equation" throughout, is at the service of the State. The only unwilling party in the case is A, and all the

dragging necessary is done to him. This is the case of a crime. On the other hand A enters the store of B on Sunday, and purchases a cravat. Unless A be the agent of a self-constituted "Society-for-Setting-Others-Straight," the arrest in such a case comes about as follows: The policeman may see the purchase made, through an open window; but he is not likely to interfere. An agent of the Society-for-Setting-Others-Straight is lurking in the neighborhood, playing the spy on those who are doing him no harm. He tracks the purchaser home, and gets his name and address; and in a short time the purchaser finds himself summoned to testify against the seller and to aid in the work of punishing a man who has not only done him no harm, but has actually done him an accommodation in selling him something which he wanted at the very time at which he happened to want it, and which perhaps he could not at that time have procured elsewhere without considerable inconvenience.

Here we appreciate at once the absence of the "personal equation." We see that the State must make out its case by the mouths of professional detectives whose standing with the busy-bodies who pay their salaries, depends upon the finding just what these last send them to seek; or else at the mouths of unwilling and grudging witnesses whose testimony must be extorted from them as though on cross-examination; whose whole interest, aim, and purpose is to defeat the side for which they are summoned, and who are almost as anxious for an acquittal as the prisoner himself. No lawyer who properly valued his reputation would cheerfully go into the trial of a civil case with the evidence of such witnesses as his sole reliance, and vital to his side.

But the prosecuting attorney who is compelled to go to trial of a case thus weak in the character of its witnesses, willing and unwilling, finds also in the weakness of its origin a strong temptation to him to be lukewarm and indifferent in his conduct of it. Like the policeman, he cannot fail to see in the existence and activity of the Society-for-Setting-Others-

Straight, a reflection upon him and his official conduct. "We have gone to the Grand Jury and are now here," says the Society, in effect, to him and to the public, "because you have neglected your duty in failing to proceed against these people." Such is, in effect, what the officers and special agents of the Society say to him in court in the presence of the public; and leading men of such a society are often explicit on this point in carefully prepared newspaper interviews. The prosecuting attorney, like the policeman, feels this keenly. Like the policeman, too, he feels that the reflection cast upon him is really unmerited. He, too, is pretty thoroughly convinced of the futility of such prosecutions, and therefore regards them as mere wasting of time and vain beating of the air, — a point of view from which no man sets out with reasonable prospect of success in an undertaking.

Very many State's attorneys, indeed, regard prosecutions for vice as worse than a mere waste of time — as positively demoralizing proceedings, doing far more harm in the exposure of their details than any number of convictions can do of good. They point to the undoubted fact that vicious stories of the imagination are among the surest and most deadly agencies of corruption. They admit that stories of crime, and prosecutions for crime, involve the same peril for the young and unsophisticated. But they insist that, just as we cannot live without prosecuting crime, so we cannot stop the publication of "sensational" narratives about crime and its detection. And they point to the fact that whatever indirect temptation to a criminal career may be held out in the "Dime Series" and others of that ilk, by the portrayal of its exciting and perilous incidents, yet in the end the villain gets his deserts, and so the spirit of these narratives is moral after all; whereas the vicious story is written expressly to make wickedness attractive and teach the folly of right doing.

And the opinion that prosecutions for vice are worse than futile, and even when successful do more harm than good, is by no means confined to policemen and State's attorneys. It

is held by nearly every thoughtful person whose position brings him into contact with vice in what may be called its endemic as distinguished from its sporadic form. Those who study social environments where vice is normal and open and involves no manner of ostracism, and where virtue is considered rather a "soppy" thing, if discovered,— and such environments were in Nineveh and shall be in every community till the end,— these students know, as well as the policeman and the State's attorney, that vice laughs at prosecutions, and recognizes them as valuable advertisements of its business.

These last observations lead us naturally to consider a more objectionable feature about prosecutions for vice than their inherent weakness, of which enough has now been said. It may be doubted if public policy justifies the frequent spectacle of the State's power baffled by the force of circumstances and vainly beating the air in a hopeless conflict with things altogether beyond its control. But the case becomes much stronger if we can show that the proceedings are not merely useless and ineffective from the weakness of their nature, but that they are inherently demoralizing—that they not only accomplish no good, but do actually result in evil. This evil is threefold—to the instigators and agents of the prosecution, to the prosecuted (morally, not financially evil to these last), and to the community at large.

It will not probably be disputed that the special agents of a Society-for-Setting-Others-Straight would be better employed, so far as they themselves are concerned, in almost any other work than that of the detective. Whatever the character of their business, judged by the end in contemplation, the manner of it involves, by the common consent, a severe strain on the manhood, integrity, and honor of its followers. If not necessarily demoralizing, it is a business that tends to demoralization. That the end in contemplation, however lofty, cannot be depended on to counteract the demoralizing influences of the business, is sufficiently attested by the oc-

casional convictions of "special agents" for blackmail. And no man who knows the almost pitiful readiness of vice of certain kinds to submit to "bleeding" from any quarter, can doubt that there are numerous instances of extortion practiced by these men, which never come to light. But the "special agent" is a hired servant, and, however devious his ways, doubtless secures by them a living for "somebody at home." This excuse, or apology, or what you will, is lacking for the volunteer detective, who, sometimes on his own behalf, sometimes as the present or prospective head of a Society-for-Setting-Others-Straight, goes "slumming" in order to appear in the role of an instigator of prosecutions for vice. The only professional reformer who is willing to do his own detective work is, strangely enough, the clerical professional reformer. And, without exception, so far as the writer is aware, he is connected with one or another of the sects that are dominated by the spirit of Brownism — is, in fact, a representative of the Brownist Church Militant.

The motives which impel the Brownist cleric to "go slumming" are probably of a mixed character. Dispassionate judgment will not exclude curiosity as a factor, though it may be a minor one. A young man piously reared, who entered the ministry too young to have become familiar with "the seamy side" of life, may not unnaturally welcome a call of "duty" to investigate matters of real social and human interest, concerning which he knows nothing except by hearsay. A morbid craving after newspaper notoriety — that peculiar and most embarrassing moral weakness of our age — is surely a prime incentive to clerical slumming. Let us admit the presence of a sincere desire to "do good" and a sincere conviction that it may be done by "slumming" and by telling tales of slumming to people who do not slum — the question is, does or does not this conviction argue a want of moral balance, only to be made the more pronounced by conduct based upon it? Let us see.

As the business of the State is with crime, so the business of the Church is with vice. To war against vice is the cleric's function. It is perfectly immaterial whether the vice is also crime or not, so far as his duty is concerned. Dishonesty is always a vice; but many a man has cheated his creditors under the forms of law — that is, without committing any crime. Ingratitude is a vice. But it can never be made a crime; and so on.

To war against vice is the cleric's function. But how, in what field, with what weapons?—*In the field of the soul, with the weapons of the Spirit.* No array of texts need be cited to prove that the Master's soldiers can win for him no other field, and use no other weapons with his sanction. The proposition is not disputed by anybody. But the extent to which it is ignored in practice by many who profess to believe in Him and to have his cause at heart, is startling to see.

And by none is it more completely ignored than by the slumming cleric. What is his object, at best, in slumming? Discovery? By no means. Ignorant as he may be of details—of which more hereafter—he knows that vices exist, and it is silly to pretend that he cannot adequately wield the sword of the Spirit placed in his hands against them without a personal knowledge of their manifestations. As well claim this in the case of dishonesty as in the case of any other vice, and seek preparation for the duty of instructing and persuading men "to be true and just in all their dealings" by frequenting the company of burglars, forgers, and sneak-thieves. No, the sword of the Spirit is not sharpened by slumming. The slumming clergyman, in fact, must be more or less than human if his sword be not tarnished and its edge dulled by the filth and miasm of the moral atmosphere through which the wearer flounders in his slumming hours.

No, the slumming cleric is not trying to discover vice. There can be no discovery of that which everybody knows

exists, and has always existed. What he is after is not to discover vice, but to *locate* it. This he has persuaded himself that it is his duty as a clergymen to do — crediting him, as before, with the highest motive as the conclusive one. But why does he conceive it to be his duty to locate vice? If he keeps his knowledge to himself, it can hurt or help nobody but himself. If he makes a public disclosure of it, he must admit that he is advertising vice, as well as serving as a sort of directory to places where it may be indulged in. If he privately communicates his slumming experiences to the State's officers, any action on their part must be followed by the same advertising, and the slumming cleric, sooner or later, must do his part as a witness to spread abroad the offensive story.

Now, this action is just what the Brownist cleric that goes slumming boasts of as his desire. He wants to provoke and set in motion the action of the State. He wants to "lead" a "movement." He says, "This sword of the Master's Spirit is of no use in my hands. Give me a policeman's club, that I may pound vice out of the people, and nippers to fasten on their wrists, that I may drag them into the straight and narrow way of righteousness." But all this is the union of Church and State, in the very teeth of the Master's teaching, and the speaker is demoralized, and his slumming is demoralizing to him.

For the Master's law is the law of morals, and nothing but demoralization can come of such a total misconception of the functions and duty of his ministers, as the inclusion therein of active intermeddling in State administration. When the slumming cleric preaches his "disclosures," he chooses some such text as "Cry aloud and spare not," a command addressed under the old dispensation to the prophet Isaiah. Isaiah 58 : 1.[1]

1 These words were actually made the basis of a series of sensational sermons and called "A Command to *Us*;" *i. e.*, to Christian ministers, by a Baltimore victim of Parkhurstism, who was overcome by the malady about the time of the present writing.

He forgets that he is ostensibly the representative of One concerning whom it was written by that same prophet, "*He shall not cry, nor lift up, nor cause his voice to be heard in the street.*" Isaiah 42 : 2. He forgets that while the function of these old prophets was essentially political, the functions of those who preach the Master of a kingdom "not of this world" are exclusively spiritual. It was the will that the prophets should direct the civil contention against disintegrating social forces; it is the will that Christian clergymen shall put on public men the spiritual armor of clean and invulnerable consciences, and leave them, thus arrayed, to battle with temptation.

In nothing was that "sweet reasonableness" of the Master more strikingly manifested than in his insistance on the absolute separation of Church and State, the refraining of his ministers from active intermeddling *as such* in civil administration. This great principle, indeed, bears the copyright stamp of Christianity as taught by its Founder. All the great pagan thinkers of antiquity regarded some sort of a union between Church and State as essential to the preservation of social order. It was a striking experience of the writer's, some time since, to hear this old pagan idea gravely urged by Christian clergymen before the House Committee on the Chicago Exposition. The question was: Shall the Exposition be open on Sunday? One Christian preacher after another protested in all seriousness that Christianity could not live without "recognition" by government; and that the government would fall to pieces unless it recognized Christianity!

This was the exact view that the pagan philosopher took of the matter. If a good-natured one of these had just been made ruler over this country, and those preachers talked that way before him, he would not even have embarrassed them and set them flying at each others' throats by demanding that they should first settle among themselves what they meant by

Christianity, before they called upon him, as the "government" to "recognize" it. The Emperor Julian did this and "egged on" the disputants till there was a "free fight" all around, and then ordered his officers to clear the room. But Julian was ill-natured. Our good-natured pagan philosopher would say to these Christian preachers, "Recognize your religion? Religion of most of the people, ain't it? That settles it. Wise statesmanship requires that the religion of the people shall be recognized by the State. Will arrange to subsidize you all out of the tax fund soon. Anything else you would like in the way of recognition, just mention it to me. And, by the way, one recognition deserves another. Of course, you will tell the people that I am 'the government' by the grace of God, and that all they have to do is to be good and discharge their duty as my subjects, in that state of life unto which it hath pleased God to call them. And keep it always before them that if they do n't behave themselves and do just as they are bid, I will hang them here, and you will see to it that they are properly roasted hereafter."

But the "sweet reasonableness" of the Master in this matter admitted of no such bargain as this. The religion He taught could not, from its very nature, receive any benefit from State recognition, or be hampered by the lack thereof. The sphere of its operation lies in a domain where the State's influence is powerless for good or evil, where its force cannot be exercised, where its writs do not run. Plate-glass is not so surely proof against the electric current as the sphere of the Master's religion is proof against any force which the State's machinery can set in operation. That sphere is the mind and heart of man. Every one should read that interesting book "Ecce Homo," in order to appreciate the striking peculiarity which distinguishes the Master from all other great moral teachers of the race, namely, his comparative indifference to conduct except as *indicia* of motives, his refusal to accept actions of any sort as meritorious in themselves,

and his "imperious insistance" on his right to dominion over our very thoughts, and to set up his kingdom "within you." The Brownist clergymen who appeared before the congressional committee on the Chicago Fair, of course defied the Master's wisdom and his expressed will when they asked for Federal recognition of his religion. The Brownist clergyman who, as the result of his slumming intermeddles as a clergyman in the work of civil administration, is none the less guilty of the same defiance.

The Master was all-wise as well as all-good. If he proclaimed the absolute separation of His religion from the State, it was because that separation was absolutely necessary in order that His religion might do the work for the sake of which he revealed it to men. We have seen that His religion was intended to operate within a domain where the State could never render it the slightest assistance. But no one grasped as did the Master, the great and vital truth that it was within the power of the State to exclude his religion altogether from its proper sphere; to emasculate it, devitalize it, paralyze it, so that it could not enter the minds and hearts of men, and dominate them.

And no one has ever grasped as did the Master the equally great and vital truth, that it was not at all the *hostility* but altogether the *friendship*—the recognition—*of the State*, which threatened the life and work of his religion. History has vindicated his position. The rack and the stake have never availed to check the steady conquest by the Master's teaching, of the minds and hearts of men. But once the Church is established by law, and just so far as, directly or indirectly, she is "recognized" by the State, her energies are gone, she lies helpless at the door of men's hearts and minds which she cannot enter, and all they that pass by mock at her humiliation. It is deserved. She has cast away the sword of the Master's Spirit, with which he armed her, and taken

instead the policeman's club which never yet opened the door of the mind and heart of man.

It is of course, an all-sufficient objection to any recognition of the Master's religion by the State, that it is contrary to his commands, and destructive of his religion. But its effects on the State are quite as baleful as are its effects on the Church. If it does not destroy the State's power, it turns it in directions the most undesirable, perverts legislation, makes government an instrument of evil instead of a benefit to men. Experience shows that ecclesiasticism never intermeddles with civil administration without serious injury to the welfare of the community. And what is true of such intermeddling by an organized Church or body of ecclesiastics, is none the less true when the intermeddling is practiced by individual clerics as such.

Richelieu may be cited to the contrary. But Richelieu was one of those exceptions that prove the rule; that is to say, an exception viewed superficially, which on closer scrutiny turns out to be no exception at all. For Richelieu, though a cleric, did not intermeddle with civil administration as such. He was at once a cardinal and a statesman. But he was a great statesman, and invaluable to his country just by reason of his ability, in the exercise of his splendid powers of statesmanship, to ignore his clerical character altogether, and wherever an "irrepressible conflict" arose, to subordinate the interests of his church to the interests of his country.

Our modern clergy are not Richelieus. And of them collectively and individually the proposition stands that their intermeddling as such with the civil administration is pregnant of confusion and disaster. Our Brownist clerics who go "slumming," and seek to effect a union of Church and State through the instrumentality of Societies-for-Setting Others-Straight, proceed on the assumption that their intermeddling with the civil administration must result in good

because they are "about the Master's business" when they engage in such intermeddling. We have seen that they are not about his business at such times, but are taking on themselves the particular business of the Hebrew prophets, a political business of the kind that the Master expressly declared to be none of his.

If they were really imbued with the sweet reasonableness of the Master whom they profess to serve, they would recognize the wisdom of his inhibition in this regard as applied to themselves individually, as well as in its application to organized churches. They would see that it is in vain for them to expect his guidance in a work undertaken in his name, which he has expressly said shall not be undertaken in his name. And a very little reflection would convince them, that without such guidance, without superhuman and miraculous direction at every step, their intermeddling with the civil administration must inevitably prove disastrous to the State.

This certainly results from the nature of the conditions with which civil administration has to deal, and from the mental attitude of the intermeddlers with reference thereto. The conditions are complicated in the extreme; interests equally worthy of subservience both on equitable and political grounds are frequently irreconcilable; compromises and *modi vivendi* have to be availed of at every turn, in the making, as in the enforcement of the laws; and wise administration must forever *feel its way* along to its true end, the greatest good of the greatest number.

The clerical intermeddler in such business is almost sure to make mischief by reason of his ignorance. The most fanatical Brownist cleric would not assume that because he *is* a cleric, therefore he knows more about diseases of the body and the management of hospitals than those who have devoted their lives to the study and practical investigation of these matters. But the theory of civil administration has en-

gaged the attention of the wise and prudent through all the ages, and its capacity for improvement by thought and experiment is admittedly not yet exhausted, though the general preservation of good order and the general security of lives and property in civilized countries are the best evidence that the means are not wholly unadapted to the ends. And while investigation and right reason and experience will doubtless lead to the adoption of more effective means from time to time, it is clear that there is little likelihood of any valuable suggestion herein coming from a person who is absolutely ignorant of the subject, and has neither made a study of the writings of great publicists nor had the benefit of a practical acquaintance with the conditions which must be dealt with.

And this is precisely the case with the clerical intermeddler in civil administration. Hence, as there has never been the smallest light shed upon the subject from a clerical source in the past, so there is not the slightest prospect that we shall ever receive any enlightenment upon it from a clerical source in the future. The education and the experience of a cleric qualify him as well to practice medicine and surgery as to give advice on a question of civil administration. But in the first case, as his ignorance alone would be dangerous, there would always be a possibility, however remote, that he might do the right thing in some emergency. There is a story that when the would-be-assassin, Paine, cut the face of Mr. Staunton with his hatchet, as the minister lay ill in bed, he made a gash which the surgeons had feared to make, and thereby relieved the patient of an accumulation of pus which was endangering his life. So the Brownist cleric in dealing with the sick, as he would have no particular prejudice in favor of one course of treatment over another and would simply be blundering blindly, would have at least a chance of sometimes blundering on the proper procedure. Nor would there be wanting, to save him from hasty conclusions, and rash action, a wholesome consciousness of his

own ignorance and mistrust of his own capacity to deal with the conditions before him.

But, now, take our cleric from the hospital and put him into the civil administration. Here it is not merely a thousand to one that he will go wrong. It is impossible that he should go right. The danger, of course, is many times greater from his ignorance, than in the first case, because now he is not only unconscious of his ignorance, but actually believes that he is acting under the inspiration of special wisdom "from on high!" Hence he will now blunder not blindly, but wildly, recklessly, without hesitation, without anxiety, without remorse. But that he must blunder wildly and recklessly is no more certain than that he must always blunder. For now he blunders blindly no longer. He blunders with his eyes wide open and his vision all distorted. He no longer feels his way in the dark without prejudice for one route over another. He follows a light which is an *ignis fatuus* that is sure to lead him and those who go with him into a hopeless morass. And this *ignis fatuus* is the union of Church and State so emphatically repudiated by the Master; and, what is more, the union of the State and the particular Church which the clerical intermeddler happens to prefer to the other churches.

In his profound and suggestive work on "The Study of Sociology," Mr. Herbert Spencer shows how necessary it is for any right and profitable thinking on public topics that the thinker should be altogether free from bias or prejudice of any kind. He develops here and elsewhere the correct conception of human government or civil administration as a machine. To properly determine the purposes to which the proposed machinery of government ought to be adapted, and then to properly construct and manage the machinery, requires the scientific cast of mind, that is to say, a mind which approaches the conditions to be dealt with, free from preconceptions, recalling impartially the experiences of the past,

ready at any moment to receive suggestions from the phenomena of the present. One of the most valuable chapters on "The Study of Sociology" is one dealing with "The Theological Bias," under the influence whereof the clerical intermeddler always approaches a question of civil administration, and which as Mr Spencer shows, is utterly incompatible with the scientific state of mind and therefore renders it unthinkable that his intermeddling should be otherwise than hurtful.

This theological bias causes the clerical intermeddler to take false and unscientific views of the purposes for which the governmental machinery should be designed, and also of the principles on which it should be constructed and managed. Of the purposes for which it should be designed, because he would have it regulate human conduct with the view to men's happiness in the next world, whereas its sole proper concern is to regulate that conduct in the way which will the least interfere with the attainment of the greatest possible happiness by the greatest possible number of people in this world. Because he would have it applied to the greatest good of his own particular religious denomination, and its members, and its application to the greatest good of any one portion of the community is inconsistent with that purpose of the greatest good to the greatest number which is the true purpose of governmental machinery. Because he would have it "run" upon the assumption that the religion of his denomination is superior as a religion to all others, and to adopt such an assumption as this is to recognize and prefer one religion to another, to establish a union of Church and State, all of which is inconsistent with the right purpose of civil government.

But the theological bias is no less fatal to right and serviceable thinking about the principles upon which the machinery of government is based, than it is to right and profitable thinking about the purposes for which it should be designed, and with a view to which it should be managed.

The government is a machine. Like all other machines, to be a good machine, it must be constructed on scientific principles. These principles require a reference to facts, not theories. One of the most important things to be considered in the construction of any machine, is the materials of which it must be made, and the materials upon which it is to operate. Now scientific principles require that in the construction of our governmental machinery, we shall have regard to the *facts* of the materials of both kinds, and not to any *theories* concerning them.

The scientific builder or alterer of a machine, studies these materials as they are, and gives no thought to the question of what they ought to be. He does not say to himself: "Here is material out of which I am to make a saw; the metal is very soft; but it *ought to be hard*, and so I will make the saw in such a manner that it will be a very good saw indeed, if the metal ever becomes hard." He does not say: "Here are certain logs which I am to make a saw cut; the wood is very hard; but it ought to be soft; so I will make such a saw as will cut it easily enough if the wood should ever become soft." But the effect of the theological bias is to produce just this unscientific attitude of mind toward the construction and alteration of the machinery of government. The material out of which the machinery must be constructed, and that on which it must operate, is human nature. It is true that the business of the clergymen is with human nature. But the business of the geologist and the analytical chemist may be alike with strata and ores and yet the training and profession of one would not qualify him to deal scientifically with the problems that lie within the domain of the other.

It is easy enough to see how the training and profession of a clergyman not only do not tend to qualify him, but inevitably incapacitate him from taking a right view of the principles upon which the governmental machinery should be

constructed. That training and profession necessarily and rightly commit him to a view of human nature framed with reference to what it ought to be, rather than to what it is. Necessarily and rightly, because his business is to teach men what they ought to do, and to induce them by sweet and soft persuasion to do it. But the business of the government is not to teach men what they ought to do, but what they *must* do, or be punished for not doing.

Here we have another illustration of the principle that law or the government has nothing to do with immorality, but deals with incivility alone. What men ought to do, is the same on a small island where there is no government at all, as it is in a great republic with the most complex system of several governments,— federal, State, municipal, what not — that can be imagined. The work of the clergyman, then, is, in a sense, above that of the government; it would exist, though no government existed; it would remain, though all government should perish.

But the clergyman's work is done when persuasion and exhortation have failed. The clergyman cannot judge, because the Master has declared that though a man shall refuse to receive his word, yet he judges not that man. The clergyman cannot punish because the Master has said, "Put up again thy sword into his place; for all they that take the sword shall perish with the sword." And here the government steps in. It has nothing to do with persuasion or exhortation. It wastes no time in trying to convince the citizen that he ought to do this, or ought not to do that. It is perfectly indifferent to his views upon the subject. It simply commands him to do or refrain, as the case may be, and judges and punishes him in its own way for disobedience. The spheres of clerical and governmental action being thus entirely distinct, the relation of the two to the material of human nature is also distinct, and the clergyman is not merely *non*-qualified, but *dis*qualified, so far as government is concerned, by reason of

his calling and profession, from taking a scientific view of the material out of which government must be constructed, and on which it must operate.

This fatal result of the theological bias, as affecting the clerical notion of the construction and management of government is of frequent manifestation. The clerical intermeddler in civil administration would have "special agents" endowed with inquisitorial powers, to dog the footsteps and enter at will the houses of citizens. And he is deaf to the suggestion that the material of which "special agents" are made is human nature, and that inquisitorial powers in such material bring forth blackmail. He answers rightly enough, they *ought not* to bring forth blackmail, and feels satisfied that the legislation he urges, since it *ought* to result in good, is wise, though it actually results in evil.

Again; this intermeddler seeing that men "need watching and guiding from the cradle to the grave,"— as, indeed, they do, and we know who has promised to watch and guide them, if they will,— would fain entrust the government with this function. Nobody will dispute with him that this would be a good thing to do, if only we had the material to do it with. A perfect government might safely and advantageously be entrusted with all the destinies of the race, with powers unlimited and most minute. But, unfortunately, the only material available for us out of which to construct a government is human nature, and human nature is not perfect. If we may return to the metaphor of the log, we may say that here is a log called government, under which we must crawl for shelter from the storms of disorder and anarchy. But let us not delude ourselves with the idea that the wood is soft and plastic, that it will lie lightly upon us, and adapt itself, without effort on our part, to our convenience and comfort. Nor let us be tempted for the sake of a little more shelter or convenience to remove one single prop

which helps to keep it from falling and crushing the life out of us.

And this is just what clerical intermeddling in civil administration, by organization and individuals, has in all ages done for mankind. It has crushed them at every point. Falsely assuming that this sheltering mass called government is soft and plastic and light of weight, its constant endeavor is to bring it down on every joint of the citizen, so that his own will shall not effect one single movement of his body, and his liberty and individuality shall be annihilated forever.

The clerical intermeddler, then, cannot be otherwise than an ill-suggester concerning the construction of governmental machinery, because he cannot but take an unscientific view of the material used in its construction, considered with relation to the machinery. But the machinery is to operate on other material of the same sort which is not used in its construction. And his view of the relation between this material and the governmental machinery, is also fatally unscientific and is rendered so by reason of his training and profession. For these lead him, more or less unconsciously, yet inevitably, to confuse the power of the government with the Power of the Universe, and to impute to the civil machinery the omnipotence of the Deity.

He is never free from the influence of the Hebrew theocracy, can never wholly rid himself of the notion that "Thus saith the Lord" is, somehow or other, the real meaning of the words "Be it enacted," with which our modern statutes begin. And as the only civil government which he has ever really studied, was divinely inspired and guided, so the spiritual government which he serves is absolute. The law he deals with is no sooner spoken than it is done. More or less unconsciously, our clerical intermeddler transfers to the civil machinery the idea of absolute power as well as of divine inspiration. If he concludes that it would be a

good thing for men to do this or that, he at once clamors for a law requiring them to do this or that. In vain is it represented to him that public policy forbids the passage of any law which cannot be reasonably enforced; that no law can be reasonably enforced which is not sustained by an overwhelming public opinion in its favor; and that, however desirable it may seem to him that men should do this or that, yet the public opinion of the community is overwhelmingly against doing this or that. Divine will he sees in the enactment of the law, divine power he relies on for its enforcement. He will have this governmental machinery set about work which every publicist of scientific mind will prove to him through reason and history it can never by any possibility accomplish.

Clerical intermeddling with civil administration has been particularly conspicuous of late in this country. And the result which the considerations just adduced would lead us to anticipate has been fully realized in practice. We have on our statute books a large and constantly increasing number of laws, saturated with the spirit of paternalism, dealing with things altogether beyond the domain and reach of the civil power; violently opposed to the overwhelming opinion of the communities; from their very nature unenforceable; and by their manifest and often grotesque futility bringing scorn upon all law and begetting a natural and wholesome contempt for the inspirers and enacters of such absurd and oppressive regulations.

The clerical intermeddler in civil affairs, then, like the Sunday of which he is the originator and conservator, so far as his influence is manifested in actual legislation, or official activity, is an unmitigated evil, and a demoralizer altogether.

SEVENTH-DAY ADVENTIST LITERATURE.

THERE is located at Battle Creek, Michigan, an extensive Publishing House, with 70,000 feet of floor space, and ample machinery, operated by several hundred workmen. This printing concern, established in this city in 1855, is a corporate institution, and publishes extensively Papers, Books, Pamphlets, and Tracts. The latter are now being literally scattered like autumn leaves, for never in the history of Seventh-day Adventists was there such a demand for these publications as at present.

Among the various topics treated in their literature are expositions of the prophecies of the Old and New Testaments, the Signs of the Times, the Second and soon-Coming of Jesus Christ, Man's Nature and Destiny, the Unchangeability of God's Moral Law, Salvation by Faith in Christ, Health and Temperance Topics, and Liberty of Conscience.

The number of books and tracts issued by this House is about two hundred in number, with a continual increase, all treating on the live topics of the present hour, and not the dead issues of the past.

The **REVIEW AND HERALD**, their weekly journal, is a vigorous exponent of the above and various other topics, and is furnished at $2.00 a year It is the uncompromising opponent of anything tending toward a union of Church and State. The **YOUTH'S INSTRUCTOR**, an illustrated weekly gem for youth, free from trash and sentimentalism, is pronounced by good judges as the best paper of its kind in the language. Terms only $1.00 a year. Sample copies furnished upon application with stamp.

This PUBLISHING HOUSE prints weekly papers in German, Swedish, and Danish Norwegian, and a semi-monthly in the Holland language. It also issues a large number of books and tracts in each of these tongues, as well as in Spanish and French. Sample papers furnished as above.

In addition to the House in Michigan the S. D. A. denomination have Publishing Houses in Oakland, California; London, England; Christiania, Norway; Melbourne, Australia; and Basel, Switzerland, where papers and books are being continually issued for those respective countries. At Basel S. D. A. literature can be obtained in eighteen or twenty of the leading languages of Europe. This is literally a polyglot publishing house.

☞Any person who desires S. D. A. reading of any kind, should send to the *Review and Herald*, Battle Creek, Mich., for their COMPLETE CATALOGUE, English and Foreign, which fully describes every publication, from the volume of hundreds of pages down to the leaflet, whether in English or some other language, with the prices of the same. *Correspondence solicited.*

In all cases address,—

REVIEW AND HERALD,

BATTLE CREEK, MICH.

THE BIBLE STUDENTS' LIBRARY

ORDER BY NUMBER.

NO.		Price, Cts.
1	Bible Sanctification	10
2	Abiding Sabbath	20
3	Views of National Reform	15
4	The Saints' Inheritance	10
10	Scripture References	4
14	The Sufferings of Christ	4
16	Christ in the Old Testament	2
24	Is Sunday the Sabbath?	1
25	The Sanctuary and the Judgment	2
26	The Sabbath in the New Testament	2
27	The Bible: Its Inspiration and Importance	2
31	The Second Advent	4
34	God's Memorial	2
35	The Temporal Millennium	3
36	The Signs of the Times	2
42	Elihu on the Sabbath	2
43	The Ten Commandments not Revised	2
46	Without Excuse	1
47	Thoughts for the Candid	1
48	Which Day Do You Keep, and Why?	1
49	Can We Know?	1
50	Is the End Near?	1
51	Is Man Immortal?	1
52	Why Not Found Out Before.	1
53	The Sabbath and the Law	20
54	Nature and Obligation of Sabbath of Fourth Command	10
55	Order of Events in the Judgment	5
57	Tent Meeting Lessons on "The Life of Christ"	2
58	Matthew 24, or the Second Coming of Christ	10
60	Tent Meeting Lessons on "Prophecy"	2
61	Tent Meeting Lessons on "Sin and Righteousness"	1
63	The Sure Foundation and Keys of the Kingdom	2
64	The Full Assurance of Faith	2
65	The Great Day of the Lord	5
67	Bible Election	3
68	The Old Testament in the New Dispensation	3
69	"Jewish." Christians are Israelites Indeed	1
70	Immortality of the Soul	4
*71	Righteousness: Where It Is, and How Obtained	1
72	Christ and His Righteousness	15
73	Can We Keep the Sabbath?	2
74	The Counterfeit and the Genuine	2
†75	Living by Faith	2
76	Bible Questions and Answers Concerning Man	2
77	The Talent	2
79	Baptism: Its Significance	2
80	Sunday: Origin of Its Observance in Christian Church	15
81	God's Message for To-day	1
83	Angels: Their Nature and Ministry	20
85	Twofold Evidence of Acceptance with God	1
86	Justification, Regeneration, Sanctification	2
90	The Bible Doctrine of the Trinity	2
93	Christian Science—Is It Science? Is It Christian?	15
95	From Sabbath to Sunday	1
97	Sun of Righteousness	10
99	Prediction, Interpretation, Fulfillment	2
100	Seducing Spirits	1
101	The Rest that Remains for the People of God	1
103	Should Christians be Members of Secret Societies?	3
104	Justified by Faith	2
105	The Way to Christ	2
107	Who Changed the Sabbath?	3
108	Life: Its Source and Purpose	10
110	Appeal to Methodists	1
111	Tormented Forever and Ever	2
112	Spiritualism: Its Source and Character	2
113	The Christian Sabbath	4
114	The Identical Seventh Day	2
115	Waymarks to the Holy City	2
116	S. S. Lessons on Luke, Jan, '94	5
117	Prophetic Lights. Illustrated, 180 Pages	50
118	Christ Tempted as We Are	2

*Also in Spanish and Portuguese.
†Also in Spanish.

PUBLISHED MONTHLY AT $1.00 A YEAR.

Address **PACIFIC PRESS PUBLISHING CO., Oakland, Cal.**

Or any one of the Offices named on the first page of cover.

Apples of Gold Library.

THIS is the title of a little monthly publication recently started by the Pacifi Press Publishing Co., and is designed especially for use in personal correspondence. Each number will contain from four to eight pages of a size convenient to go into a number six envelope without folding. It is printed on thin super-calendered paper, and one or two numbers can be put in with an ordinary letter without increasing the postage.

It is the object of the publishers to present in this Library the leading themes of the Gospel, in a short, attractive style, that will at once arrest the attention and create a favorable impression, and a desire to read more. The themes presented will embrace, "The Love of God," "Justification by Faith," "Christ our Righteousness," and kindred subjects.

It is not intended that these tracts shall take the place of our BIBLE STUDENT'S LIBRARY, or any other publication, but they are to be used by Christians in their daily correspondence. A package should be kept on hand, and when writing to a friend, or any person, just inclose one or more of these tracts. It will not usually add to the postage, and in doing this work we shall be "sowing beside all waters."

We feel confident that Christian people generally will gladly avail themselves of this simple method of getting the truth before the masses.

The subscription price has been placed at ten cents a year, postpaid. Special discount when taken in quantities.

The price of different numbers will vary according to the number of pages they contain. It is possible that some numbers will contain more than eight pages, but not exceed sixteen.

These tracts are published in Library style in order to secure the pound rate of postage. The first nine numbers are now ready, and are entitled,—

No. 1.—Looking unto Jesus.
No. 2.—The Christian's Privilege.
No. 3.—The Sure Promises of God.
No. 4.—How to get Knowledge.
No. 5.—The Church and the World (py).
No. 6.—The Elect of God.
No. 7.—How Esther read her Bible.
No. 8.—The Thief on the Cross.
No. 9.—The Eleventh Hour.

These numbers will be sent to any address at the rate of 50 cents a hundred, postpaid. Sample copies free. Address,

PACIFIC PRESS PUBLISHING CO.,

NEW YORK AND KANSAS CITY. *OAKLAND, CAL.*

American State Papers.

A BOOK FOR THE TIMES.

A most valuable work on the subject of religious legislation in the United States, from the foundation of the government to the present time.

It includes the various prominent acts, both state and national, relating to subjects of religion, such as Bills of Rights, Amendments, Treaties, Sunday observance, etc. In it are found various memorials, petitions, and remonstrances; House and Senate Reports on Sunday Mails; documents on the "Sphere of Civil Government," the "Rights of the Jew," "Religion in the Public Schools," "Civil Laws against Blasphemy," "Christianity and the Common Law," "Sunday Legislation," etc., etc.; judicial decisions on Sunday Laws and the Bible in the Public Schools. It also contains in an appendix the provisions in the Bills of Rights of all the States relating to the rights of conscience, and —

THE SUNDAY LAWS, COMPLETE, OF ALL THE STATES AND TERRITORIES.

There are also running foot-notes all through the book, containing the comments and statements of eminent men.

368 pages. Price, best binding, $2.50. Cheap edition, $1.25.

CIVIL GOVERNMENT AND RELIGION.

By A. T. Jones, editor of the "AMERICAN SENTINEL." This work shows clearly the relation that should exist between the Church and the State at the present time, as proved by Holy Writ and the historical evidence of twenty-five centuries. Scriptural, logical, plain, and forcible. 176 pp. Cloth, plain, 50 cts. Pamphlet, 25 cts. Also issued in pamphlet form in Danish, Swedish, and German.

THE TRUTH FOUND.

A treatise of 64 pages, by J. H. WAGGONER, on

"The Nature and Obligation of the SABBATH of the FOURTH COMMANDMENT."

This is a stirring argument on the perpetuity of the Sabbath as it stands among the ten commandments in the Decalogue.

In paper covers, post-paid, 10 cts.

Our Position and Work.

By W. H. LITTLEJOHN.

The full title of this pamphlet is "The Position and Work of the True People of God under the Third Angel's Message." This little work very clearly defines the work of God's people when the gospel of mercy closes forever.

82 Pages, in paper covers, post-paid, 10 cts.

BIBLE TRACTS.

The following is a list of valuable Scripture Tracts, which will be furnished post-paid at the price stated after each tract:—

Can We Know? or, Can the Prophecies be Understood? 1c. Christian Sabbath, 1c. Coming of the Lord, 1c. Departing and Being with Christ, 2c. The Sabbath, by Elihu, 2c. End of the Wicked, 3c. Greek Falsehood, 4c. Is Man Immortal? 1c. Is the End Near? 1c. The Judgment, 2c. Justification by Faith, 5c. Law and Gospel, 2c. Lost-Time Question, 2c. Millennium, 3c. Parable of the Ten Virgins (Matt. 25) 3c. Present Truth, 4c. Prophetic Scar, 2c. Prophetic Symbols, 5c. Rich Man and Lazarus, 2c. Sabbath in the New Testament, 2c. Samuel and the Witch of Endor; or, The Sin of Witchcraft, 4c. Sanctuary of the Bible, 2c. Scripture References.—A compilation of proof-texts on twenty-five different subjects, 4c. Second Advent.—Manner, object, and nearness of the event, 4c. Seven Reasons for Sunday-keeping Examined, 2c. Signs of the Times, 3c. Sinner's Fate, 1c. Sleep of the Dead, 1c. Spirit of Prophecy; or, Perpetuity and Object of the Gifts, 3c. Spiritualism a Satanic Delusion.—A scathing arraignment of modern necromancy, 4c. Sufferings of Christ, 4c. Sunday-Keeping not a Bible Doctrine, 1c. Sunday-Keeping; Will It Answer the Purpose? 3c. The Day of the Crucifixion and Resurrection of Christ, 5c. The Great Commandment (Matt. 22:35-40) ½c. The Intermediate State, 1c. Two Laws, 2c. What was Nailed to the Cross (Col. 2:14-17)? 2c. Which Day do You Keep, and Why? and God's Answers to Man's Excuses, 1c. Who Changed the Sabbath? 3c. Why not Found out Before? 1c. Without Excuse, 1c.

*** For anything in the preceding list of publications, address,

REVIEW AND HERALD PUB. CO., Battle Creek, Michigan.